

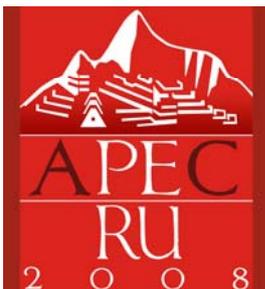


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Peru IAP Study Report 2007

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PERU
IAP STUDY REPORT
2007

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Contents

- 1. Introduction**
- 2. General Issues**
- 3. Evaluation Methodology**
- 4. Analysis and Comments on Peru's Individual Action Plan**
 - I. Tariffs
 - II. Non-Tariff Measures
 - III. Services
 - IV. Investment
 - V. Standards and Conformance
 - VI. Customs Procedures
 - VII. Intellectual Property Rights
 - VIII. Competition Policy
 - IX. Government Procurement
 - X. Deregulation/Regulatory Review
 - XI. Implementation of WTO Obligations, including ROOs
 - XII. Dispute Mediation
 - XIII. Mobility of Business Persons
 - XIV. APEC Food System
 - XV. Transparency
 - XVI. Free Trade Agreements/Regional Trade Agreements
 - XVII. Trade Facilitation
- 5. Annexes**
 - A Members of the Review Team**
 - B. Questionnaire and Peru's Responses**
 - C. Organizations and Officers Consulted**

1 Introduction

This Study of Peru's progress in achieving its Bogor Objectives since the 2003 Individual Action Plan (IAP) Report and overall was prepared by the Study Review team pursuant to the directions and methodology set by the APEC Members. The Study was prepared using the Bogor objectives of "free and open trade and investment" as the comparative benchmark. The Review Team have endeavoured to examine Peru's current trade and investment policies, together with recent changes made since Peru's last IAP and review, and in light of the progress to date, to identify the changes needed for Peru to successfully achieve its Bogor objectives. The Study benefited from a well organized session of meetings with Peruvian Government officials held in Lima, Peru between September 24th and 27th, 2007.

Based on the review conducted by the Review Team, it is apparent that Peru continues to make progress towards achieving its Bogor Goals. Trade liberalization and investment measures adopted by the Peruvian Government have supported economic growth which has, in turn, provided an incentive for further trade liberalization.

There have not been advancements in liberalization in all of the sectors reviewed by the Review Team. In some other sectors, such as dispute mediation, Peru has already liberalized to a significant degree and has very little left to do other than stay the course. In other sectors, such as investment, there has been little liberalization since the 2003 IAP. There are a number of reasons for this apparent standstill, but they can primarily be attributed to a lack of resources. There does not appear to be an official unwillingness to continue to pursue trade liberalization. Rather, Peruvian officials, in line with Peruvian Government policy, are pressing forward with efforts towards liberalization.

As in all Member Economies, Peru continues to maintain a range of trade barriers and restrictions, which are discussed in detail in the analysis to follow. These various measures stand in stark contrast to Peru's overall advancement toward trade liberalization, however there are relatively few trade barriers at issue and that these do not appear to have a significant impact on trade.

With respect to the specific sectors, the Review Team notes the following:

(i) Tariffs

Peru has progressively reduced its applied tariffs through an *ad hoc* review mechanism. Peruvian officials believe that by 2020, the average applied tariff rates will be 3% or lower. Bound tariff rates, which remain at 30% for industrial products and 68% for few agricultural products, will only be reduced through multilateral negotiations. While Peru has made significant progress in reducing applied tariff rates, formalizing the *ad hoc* review mechanism would make future reviews more predictable and could result in greater liberalization.

(ii) Non-Tariff Measures

Peru maintains very few non-tariff measures. The few non-tariff measures that do exist have been in place for some time and there are currently no plans to review those measures to determine whether they can be amended to reduce their trade restrictive effects or whether they can be eliminated altogether.

(iii) Services

Peru has maintained commitments to provide market access and non-discriminatory treatment in a substantial number of service sectors. It is actively participating in the WTO GATS negotiations as well as several bilateral trade agreements. These efforts will significantly eliminate trade and investment restrictions and strengthen the competitiveness in service sectors. Peru is also pursuing increased transparency in services.

Peru should pursue mutual recognition of foreign credentials and improve fair and transparent assessment of foreign qualifications to allow greater access to professional

practice and for general employment in business, education and tourism services. Peru should also consider reducing capital share limitations and employment restrictions in audio-visual, cultural and transport services.

In financial and telecommunication sectors, the legal and supervisory framework should be consolidated and capacity-building of administrative bodies should be strengthened to promote competition and maintain stability. Regulations should focus on controlling abuse of market power and restrictive practices. Some telecom suppliers are concerned that unconstrained pricing by the dominant supplier has created significant barriers to competition in the wireless sector. Therefore, continued oversight and review of these rates by OSIPTEL will be crucial to achieving progress in addressing these concerns.

(iv) Investment

Peru maintains a very open investment regime that generally extends equal treatment to foreign investors, although some restrictions on foreign investment do exist and have remained in place for some time. There are currently no plans to review those restrictions to determine whether they can be amended to reduce their trade restrictive effects or whether they can be eliminated altogether.

(v) Customs Procedures, Standards and Compliance, Trade Facilitation

Peru has taken steps to liberalize its customs procedures and its standards and compliance requirements. Peru is also taking steps to better facilitate foreign trade.

Peru has established longer-term objectives to achieve trade liberalization in each of these areas. To date, Peruvian officials have implemented a number of these objectives and have set achievable goals for 2008 and beyond.

(vi) Intellectual Property Rights

Peru has taken concrete and pragmatic steps to achieve more adequate and effective intellectual property protection in legislation, administration and enforcement. Peru has revised almost all its intellectual property laws in conformity with the principles of international agreements, and has made progress in introducing legislative measures to protect traditional knowledge and to recognize geographic indication. In addition, the government public-awareness activities and training programs have generally been very efficient and productive.

Despite intensive action to combat infringement, Peru continues to confront difficulties and challenges relating to protection of intellectual property rights. Infringement of intellectual property laws remains a great concern of foreign producers.

Peru should introduce more effective enforcement measures to protect intellectual property rights. Specifically, additional legislation is needed to clarify the rights of artists and producers. Peruvian custom authorities should also strengthen border controls, more police actions and administrative investigations are needed, prosecutors must actively pursue piracy cases, and judges should impose the deterrent-level sentences afforded in the criminal code to better protect intellectual property rights. Public awareness of the importance of protecting intellectual property should be further increased. The Government of Peru should also tighten its implementation of the Trademark Act and Anti-monopoly Act.

(vii) Competition Policy

Peru has made significant improvements to competition policy by improving the administration and consistent integration of policy issues relating to defense of market competition, intellectual property and technical regulations. In particular, the Peruvian competition policy legal framework is transparent and effective, and enforcement mechanisms have been improved adequately.

However, there still seems to a room for public awareness activities to foster a culture of competition in the Peruvian market economy, focusing on the promotion and dissemination of benefits of competition policies. It is also suggested that INDECOPI's autonomy and neutrality be deliberately strengthened.

(viii) Government Procurement

Peru has made a number of significant advances in its government procurement regulatory system and administrative procedures and is committed to continuing efforts to move towards an open and non-discriminatory government procurement regime.

Due to the government procurement Electronic System and the National Register of Suppliers, any potential supplier can have access to information concerning government procurement anytime, anywhere without any cost. The use of electronic means to publicize tenders and other relevant information has generated savings to the government and has increased participation in government procurement. New tender modalities, especially reverse auction and framework agreements, have also generated savings. Time limits of those tendering procedures become shorter and more useful for public entities.

Notwithstanding this progress, some APEC Member Economies contend that the current bonus of 20-point margin to locally produced goods and services seems to be excessive, giving unfair treatments to foreign supplies. This kind of “buy local” policy should be reduced or eliminated. Peru is also encouraged to continue improving beyond three items in the APEC Non-binding Principles on Government Procurement.

(ix) Deregulation/Regulatory Review

The Peruvian Government has made significant strides since 1990s in deregulating a number of its regimes, markets and sectors by means of enhancing regulatory transparency, by pursuing well-designed privatization programs, and by improving

regulatory review mechanisms and quality control mechanisms. Many new administrative entities and technology have been introduced to achieve legitimate and rational objectives. Through the reforms introduced by Peru, there have been noticeable reductions in economic distortions and restrictions.

The Government of Peru should continue to pursue its efforts to reduce regulatory burdens and should adopt a more ambitious approach to introduce greater institutional reforms, particularly as they relate to labour and the capital market.

Compared with other sectors, Peru has not fully participated in APEC regulatory reform activities. Peru is encouraged to dedicate more resources to participation in Collective Action Plans and to draw on the experiences from other APEC economies in deregulation/regulatory review.

(x) WTO Obligations (including ROOs) and Dispute Mediation

Peru has made positive progress in WTO obligations and in dispute mediation to such a degree that it is unlikely that Peru could do more to achieve its Bogor goals.

(xi) Mobility of Business Persons

Peru has endeavored to facilitate business person mobility in APEC by enhancing the use of updated information and communication technology, while recognizing the importance of national security and counter-terrorism by strengthening border inspection and identification of high-risk visitors. Peru also actively participates in capacity-building and technological cooperation programs with other APEC Member Economies.

Regarding the treatment at the main airport (Jorge Chavez International Airport), all the ABTC holders can use the APEC priority processing lanes when they enter to Peru. Peru is seeking to further advertise the advantages of the ABTC system and seeks to encourage its greater use and recognition in Peru.

(xii) APEC Food System

It is increasingly important to build an APEC Food System as a comprehensive approach to action in the food sector. The Peruvian Government has recognized the importance of this initiative and is committed to shaping a comprehensive framework for the food system that incorporates relevant policy elements.

Peru has developed a more robust approach to strengthening its food and consumer product safety standards by using a scientific risk based approach and through Customs border controls.

Peru should continue its efforts to promote a more open environment to facilitate the free flow of agricultural goods within the APEC region through on-going trade liberalization programs. Additional capacity building is also urgently needed to promote cooperation on technical infrastructure development and to achieve recognition of conformity assessment.

(xiii) Transparency

Peru's transparency standards have been systematically improved. Through Government effort and modern IT development, Peru has implemented many methods for promoting transparency including publishing official journals, establishing contact points and releasing data and policy information on a regular basis. Peruvian citizens, the business community and other stakeholders have all benefited from this dramatic progress. These measures also enable government agencies, and particularly regulatory bodies, to more efficiently receive comments and to better respond to public inquiries.

Peru should maintain its dedication to enhancing transparency standards by providing information on laws, regulations and procedures to interested persons or groups in a more prompt, simplified and easily accessible manner. In addition, the next stage of work on

transparency should focus more attention and resources on regional and local governments.

(vi) FTA/RTA

Peru is an active participant in international trade agreements and has made impressive progress in negotiating regional trade agreements and bilateral free trade agreements and impressive progress in ongoing negotiations. Peru has set the goal of entering into free trade agreements with every APEC Member Economy. Peruvian officials noted that negotiating free trade agreements among APEC Members would result in interlocking obligations that would lead to greater liberalization within the APEC area and would also contribute to Peru's goal of becoming the South American hub within APEC.

The Review Team can say with confidence that despite standstill in some areas Peru has made progress towards its Bogor goals since the 2003 Review. The Review Team cannot say that this progress is solely attributable to Peru's desire to achieve the APEC goals, although that is clearly a factor. Since 2001 successive Peruvian governments have adopted policies that have focused on economic development and the importance of foreign trade. Peruvian officials noted that the change in government focus has resulted in greater public interest in the export market, particularly as Peru became more and more export-oriented. Greater public interest has, in turn, resulted in more government interest in foreign trade and a greater willingness to pursue measures to promote and encourage foreign trade as an economic development tool. Regulatory reforms in virtually all areas have been directed to the goal of encouraging international trade. The benefits of these measures can be seen in the economic growth that Peru has enjoyed since 2002. Thus, Peruvian reform measures that will achieve the APEC goals have largely been adopted to achieve largely unrelated Peruvian development objectives. In light of the apparent decision to proceed on the basis of national self-interest, it is far more likely that Peru will achieve its Bogor Goals by 2020.

For example, Peru is pursuing an ambitious program of negotiating free trade agreements. Peruvian officials noted that their ability to negotiate future agreements is limited only by human and financial resource constraints and the time required to engage in and complete negotiations. While these comments were specifically made with respect to trade agreements, they would also apply to a number of other areas. During meetings in Lima, Peruvian officials often noted that they faced resource constraints that placed limits on their ability to pursue their reform agenda. The Study Team suggests that the APEC Members consider supporting Peru by providing trade facilitation and technical assistance.

Based on progress to date, the efforts being taken to achieve further trade liberalization, and the underlying reason why Peru is pursuing trade liberalization, the Study Team sees no reason why Peru should not achieve its Bogor objectives by 2020. The Study Team believes that there is bureaucratic and governmental support for further trade liberalization. So long as the Peruvian Government continues to support a policy of trade and investment liberalization, as it has done, and provide the necessary resources to its officials, the Study Team considers that Peru will achieve its Bogor objectives, and likely some time ahead of 2020.

2. General Comments

Since 2002, Peru has experienced a period of general economic growth. Following stagnation in 2001, the economy grew by 5.2% in 2002, 3.9% in 2003, 5.2% in 2004, 6.4% in 2005¹ and 8.03% in 2006. Peru's GDP has increased from USD \$59.931 billion in 2001 to USD \$79.341 billion in 2005. Peru's GDP increased to USD \$44.469 billion in the first six months of 2006 compared to USD \$39.564 billion for the same period in 2005.²

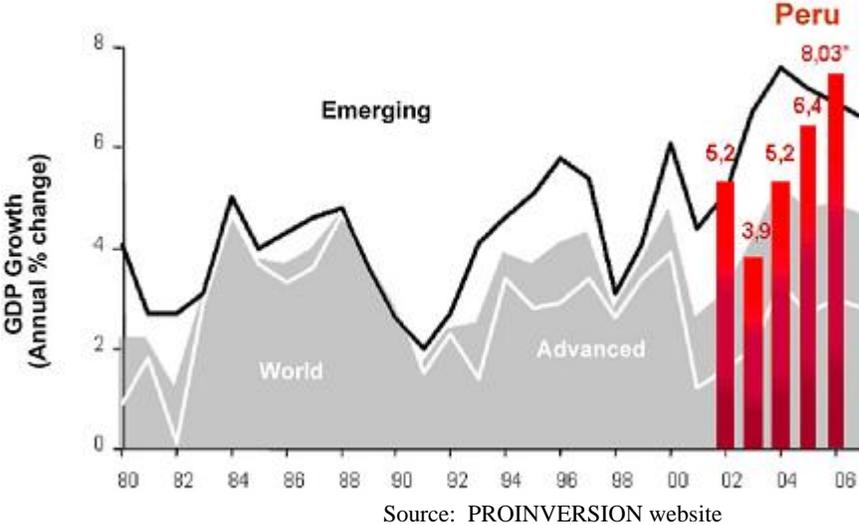
In 2006, economic growth was approximately 8.03%. The high level of recent economic activity for the six months ending June 30, 2006 was driven by strong performance in the construction and manufacturing sectors and an increase in the growth of domestic demand resulting from the

¹ Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg 21

² Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg 25

5.3% increase in private consumption and the 20.2% increase in private investment.³ As of September 2007, Peruvian officials were predicting continued high levels of economic growth.

World Growth (% change)



Economic growth can be attributed to a number of factors. During the meetings held in Lima, Peruvian officials noted a change in public and official attitude to international trade which they generally credited with creating the conditions necessary for regulatory reform that promoted economic growth. This change in political attitude was also noted by the Government of Peru in the Supplement to its January 17, 2007 bond issue Prospectus.

“In June 2001, Alejandro Toledo Manrique was elected President based on a platform of reform that recognized the value of an open economic system and reform away from President Fujimori’s legacy of political coercion and financial misdealings. During the administration of President Toledo, Peru had one of the best performing economies in Latin America, with GDP growth of 6.4% and 6.6% in 2005 and the first six months of 2006, respectively, mainly attributable to the growth in the mining and export sectors fueled by higher international commodities prices for these exports.

In June 2006, Alan Garcia was elected President to a five-year term. President Garcia served as president in the period 1985-1990, and his first administration faced many challenges and confronted many crises and ended with political instability. The first Garcia administration was followed by the administration of President Fujimori. The

³ Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg 1.

current Garcia administration was elected on a platform that seeks to implement social and political reforms and continuity to the macro-economic stability of recent years, as well as solidifying Peru's relationships with its international partners."⁴

The interest in international trade and an export-oriented economy has fostered interest in making Peru the South American hub for a series of interconnected free trade agreements. Peruvian officials noted that while Peru supports multilateral liberalization through developments at the WTO, it also envisages widespread liberalization in the APEC region through a series of interconnected free trade agreements. To this end, Peru has embarked on an ambitious program of negotiating free trade agreements with APEC partners, and beyond in Europe, and has set a goal of entering into free trade agreements with all APEC Members. Peruvian efforts to this end are only limited by human and financial resource constraints and by the time required to negotiate and conclude agreements. Peru has also embarked on a program of regulatory reform that is intended to facilitate trade and investment in Peru. Although these reform programs have not yet been completed, their impact on the economy can be seen in the progress made over the past several years.

While it is clear that Peru's economic growth can be attributed to government reform efforts, it is also clear that economic growth can also be attributed to factors beyond Peru's control including favourable market conditions that have supported its export trade, particularly of traditional Peruvian exports.

The principal economic activities in Peru are services (including wholesale and retail trade, transportation and tourism), manufacturing, agriculture and livestock, and mining and hydrocarbons.⁵

Peru's agriculture and livestock sector, which is dominated by small-scale producers, accounted for 5.7% of total exports in 2005.

"Peru's main agricultural products are potatoes, alfalfa, rice and coffee, which together accounted for approximately 39.0% of Peru's agricultural production in 2005. Peru's

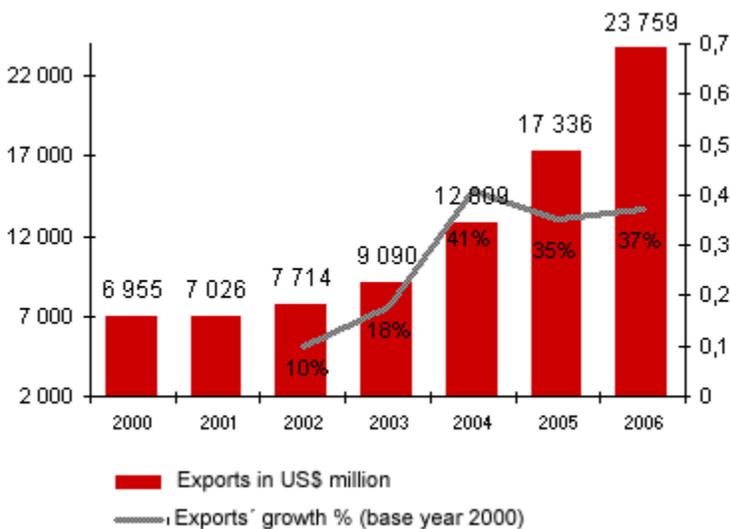
⁴ Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg 1.
⁵ Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg 29

traditional agricultural products include cotton, sugar, coffee and rice. Agricultural production has increasingly focused on non-traditional export products destined primarily for the winter markets of Europe and the United States. The northern coast of Peru is the main area for cultivation of non-traditional export crops such as asparagus, mangos, passion fruit and oranges. Animal husbandry – sheep, poultry and cattle – is predominant in the south.”⁶

Peru’s mining and hydrocarbon (mining and fuels) sector grew 8.1% in 2005 as a result of an approximately 7.4% growth in the production of metals, due to high international commodity prices, and 23.4% growth in the production of natural gas and petroleum.⁷

Economic growth has been driven by an overall growth in exports. Between 2000 and 2006, the total value of Peruvian exports increased from approximately USD \$6.955 billion to USD \$23,759 billion, an increase of approximately 341%.

Export Growth



There was an increase in exports of 32.4% in the first six months of 2006 compared to the first six months of 2005 due primarily to a 45.1% increase in mineral exports. These exports

⁶ Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg. 32
⁷ Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg. 34

represented 60.3% of total exports for the period and were valued at approximately USD \$17 billion.⁸

Peru distinguishes between traditional and non-traditional products and is seeking to support the development and export of a larger proportion of non-traditional products.

Traditional and Non Traditional Exports

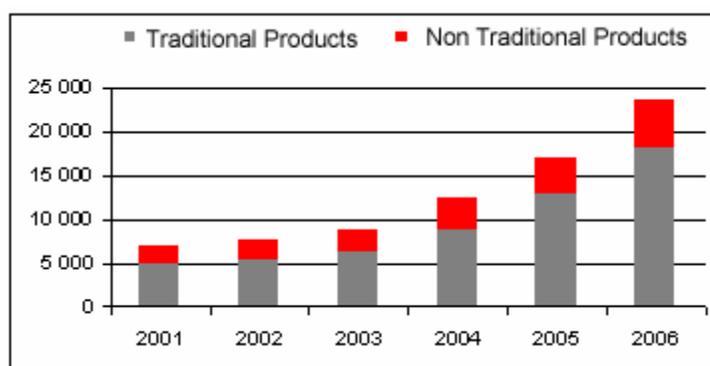
Exports	2005	2006	Var%
I. TRADITIONAL PRODUCTS	12 918,7	18 332,2	41,9
FISHERIES	1 303.0	1 331.4	2.2
AGRICULTURE	330.6	572.5	73.2
MINING	9 759.5	14 715.8	50.8
CRUDE AND BYPRODUCTS	1 525.6	1 712.5	12.3
II. NON TRADITIONAL PRODUCTS	4 276.5	5 262.1	23.0
AGROFARMING	1 008.7	1 212.0	
FISHERIES	322.5	432.1	34,0
TEXTILE	1 275.0	1 468.9	15,2
LUMBER AND PAPER, PRODUCTS	261.3	332.8	27,4
CHEMICAL	537.6	600.8	11,8
NON METALIC MINERALS	118.1	135.2	14,5
IRON AND STEEL AND JEWELRY	493.3	828.8	68,0
METAL-MECHANICS	190.1	162.5	-14,5
OTHER	69.9	89.0	27,3
III. OTHER	141,1	155,3	10,1

Source: BCRP and SUNAT.

Notwithstanding efforts to promote non-traditional exports, traditional products continue to outpace exports of non-traditional products. Between 2005 and 2006, the total value of traditional product exports increased 41.9% from approximately USD \$12.918 to USD \$18.332 billion while non-traditional products increased approximately 23% from USD \$4.276 billion to USD 5.262 billion. Traditional exports have clearly benefited from favourable international commodity prices that have supported their production and sale.

⁸ Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg 2

Traditional Exports And Non Traditional (US\$ millions)



Traditional Exports (US\$ millions)

Sector	2004	2005	Var %
Traditional Exports	12 918,7	18 332,2	41,9
Mining	9 759,5	14 715,8	50,8
Oil	1 303,3	1 331,4	2,18
Fishing	1 525,6	1 412,5	12,3
Agriculture	330,6	572,5	73,2

Source: Central Bank (BCRP)

Non Traditional Exports (US\$ millions)

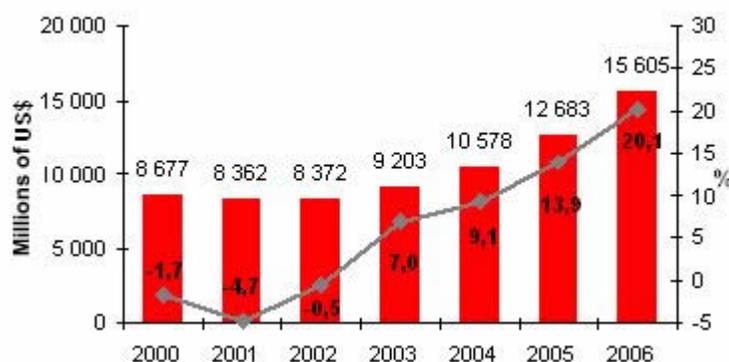
Sector	2004	2005	Var %
Manufactured products	4 276,5	5 262,9	23,0
Textile	1 275,0	1 468,9	15,2
Agrofarming	1 008,7	1 212,0	20,2
Fishing	322,5	432,1	34,0
Chemical	537,6	600,8	11,8
Metal - mechanical	190,1	162,5	-14,5
Iron - steel and jewelry	493,3	828,8	68,0
Non metallic minerals	118,1	135,2	14,5
Wood and paper	261,3	332,8	27,4
Others	69,9	89,0	27,3
TOTAL	17 336,3	23 749,6	36,9

Source: Central Bank (BCRP)

Since 2001 there has also been an increase in investment in Peru. With respect to private investment, the Government of Peru noted,

“Domestic investment as a percentage of GDP increased from 18.7% in 2001 to 18.9% in 2002, reflecting an increase in private investment, reflected in the Camisea gas project and the construction of shopping centers, then decreased to 18.8% in 2003. In 2004, increased again to 18.9% due to the growth in mortgage loans and several private non-residential projects in the mining and manufacturing sectors before decreasing to 18.6% in 2005 as a result of a reduction in inventories. In the first six-month period ended June 30, 2006, domestic investment was 21% of GDP, compared to 19% for the corresponding period in 2005. This increase is mainly attributable to the growth of private investment in the mining and manufacturing sectors.”⁹

Private Investment Growth (%)

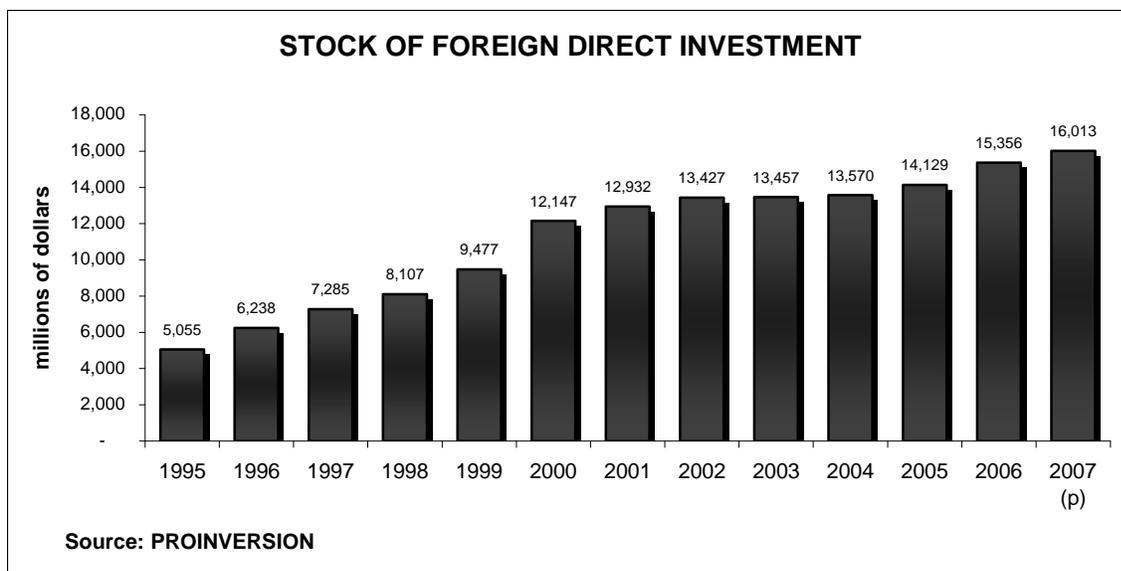


Source: MEF and BCRP

There has also been an increase in overall foreign direct investment, but at a lower rate than the rate of overall economic growth. As of December 31, 2007, the stock of foreign direct investment declared to PROINVERSION was USD \$16.01 billion.¹⁰

⁹ Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg 27

¹⁰ The foreign direct investment figures are based on registration statements made by investors pursuant to Legislative Decree 662, Article 19 and by information provided by CONASEV and the Public Registry. Legislative Decree 662, Article 19 requires that foreign investment be registered with PROINVERSION, but does not require registration within a particular time period. Therefore, the foreign direct investment figures may be underreported to reflect late registrations.



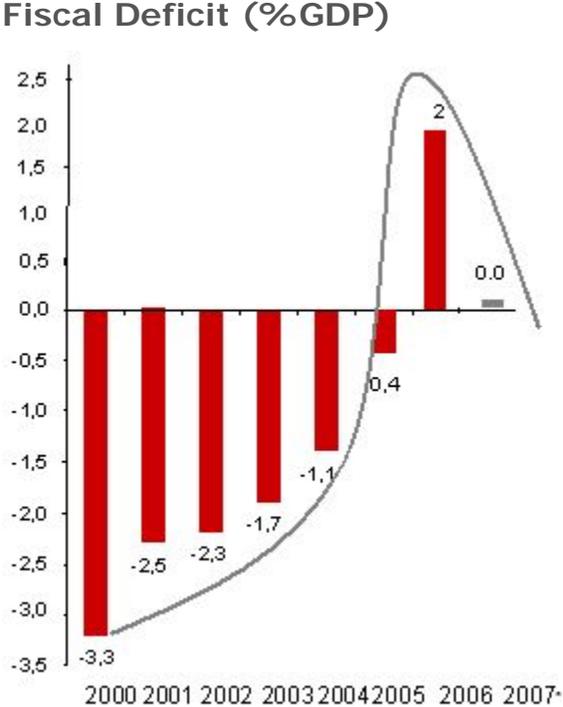
The main sources of foreign direct investment in 2007 were Spain (USD \$4.6 billion), the United Kingdom (USD \$2.7 billion) and the United States (USD \$2.6 billion). In 2007 the stock of foreign direct investment was in the following sectors:

**FDI STOCK BY DESTINATION SECTORS
(US\$ MILLIONS)**

SECTOR	2007 (p)	%
COMMERCE	606.45	3.79%
COMMUNICATIONS	4,931.89	30.80%
CONSTRUCTION	153.93	0.96%
ENERGY	1,660.87	10.37%
FINANCE	2,119.70	13.24%
INDUSTRY	2,352.91	14.69%
MINING	3,138.64	19.60%
FISHING	150.14	0.94%
OIL	207.93	1.30%
SERVICES	270.87	1.69%
SILVICULTURE	1.24	0.01%
TRANSPORT	285.45	1.78%
TOURISM	62.10	0.39%
HOUSING	25.72	0.16%
ACC. TOTAL	16,012.86	100%

FDI Stock as of December 31, 2007

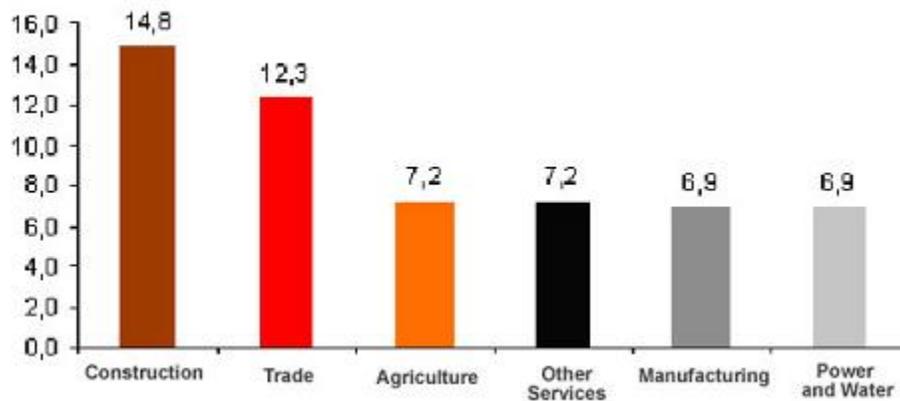
A direct benefit of the improved economy is improved government revenues. After years of budgetary deficits, Peru enjoyed a surplus in 2006 and predicted a balanced budget for 2007.



Source: Banco Central de Reserva del Peru/ *Projections: MEF

By the end of 2006, construction, trade, agriculture, manufacturing and other services were Peru's best performing industries. The construction industry performed well because of an increase in shopping centers, housing starts and an expanded realty market. Growth in agriculture includes both crops and livestock and is has primarily been driven by exports. Growth in manufacturing has been in non-primary sectors that produce value-added goods and increase overall employment.

GDP per Sector 2006 (% var)



Source: Banco Central de Reserva del Perú

Domestic Gross Product by Productive Sectors (Percentage Var.)

	2002	2003	2004	2005	2006
Agriculture (crop and livestock) 2/	6,1	1,9	1,7	4,8	7,2
Fisheries	6,1	-12,5	33,9	1,2	2,9
Construction	7,9	4,3	4,7	8,4	14,8
Mining and Hydrocarbons	12,0	5,4	5,2	8,1	1,3
Manufacturing	5,9	3,2	7,4	6,5	6,9
Other services	4,1	4,5	4,4	6,3	7,2
Power and water	5,5	4,2	4,6	5,3	6,9
Trading	3,7	2,9	5,8	5,2	12,3
GROSS ADDED VALUE(GVA)	5,3	3,8	5,1	6,2	8,03
Product taxes and import tariffs	4,0	5,2	6,4	8,5	
GROSS DOMESTIC PRODUCT	5,2	3,9	5,2	6,4	
Primary sectors GVA	7,7	2,9	4,6	5,4	
Non primary sectors GVA	4,6	4,0	5,2	6,5	

1/ Preliminary / 2/ Including forestry
Source: Banco Central de Reserva del Perú, INEI

Since 2001, Peru has gone from trade deficit to trade surplus, due to a number of factors which include favourable government policies and a generally held view that the export market is important for Peru.

“In 2001, the trade deficit was US\$195 million compared to a trade surplus of US\$292 million in 2002. This was primarily as a result of a 9.8% increase in exports compared to

2001, particularly gold and other metals, that was partly offset by an increase in imports of 2.8%. In 2003, Peru registered a trade surplus of US\$853 million, a 192.1% increase from 2002, primarily as a result of a 17.9% increase in exports (principally in mining), compared to 2002, that was partially offset by an increase in imports of 11.0%, which occurred primarily in raw materials and intermediate goods. In 2004, the trade surplus increased to US\$3.0 billion, a 252.2% increase from 2003, primarily attributable to the increase in exports (due to higher volumes and better export prices) which was higher than the increase in imports. In 2005, the trade surplus increased to US \$5.3 billion, a 75.1% increase compared to 2004. This increase was explained by a greater increase of exports (35.3%) compared to imports (23.2%). Total exports increased from US\$7.0 billion in 2001 to US\$17.3 billion in 2005, a compound annual growth rate of 19.8%. Total imports increased from US\$7.2 billion in 2001 to US\$12.1 billion in 2005, a compound annual increase of 10.8%.

Peru's trade surplus increased from US\$2.1 billion in the six months ended June 30, 2005 to US\$3.3 billion in the first six months ended June 30, 2006, primarily as a result of an increase in exports due to higher commodity prices and higher export volumes of gold, lead, and coffee, as well as growth in non-traditional exports that was partially offset by an increase in imports during the period. Total exports in the six-month period ended June 30, 2006 were US\$10.4 billion compared with US\$7.8 billion in the comparable period of 2005. Total imports increased from US\$5.7 billion in the six-month period ended June 30, 2005 to US\$7 billion in the same period in 2006, primarily as a result of the increased purchase of primary materials for industrial use.”¹¹

The United States is Peru's largest trade partner, accounting for 31.0% of total Peruvian exports and 17.9% of total imports in 2005.¹²

Trade by Countries 2006 (US\$)

	Country	Amount (USD)
1	United States	5 467 581 346
2	China	2 267 276 964
3	Switzerland	1 682 985 277
4	Canada	1 592 353 865
5	Chile	1 421 518 592
6	Japan	1 229 763 984
7	Germany	811 950 429
8	Brazil	809 357 724
9	Italy	761 401 050
10	Spain	761 216 598

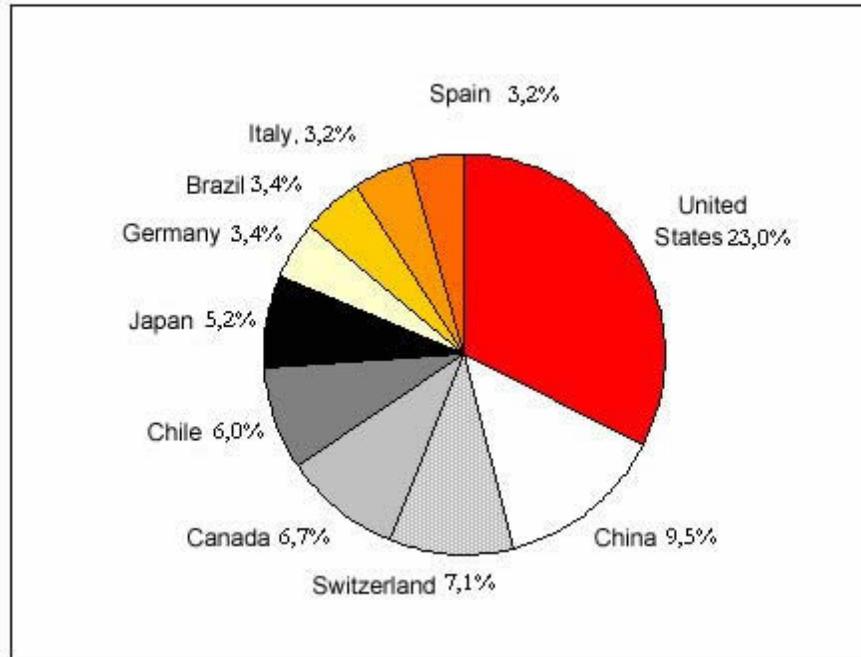
Source: SUNAT

¹¹ Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg 49 -

50

¹² Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg 53 and 56

Trade by Countries 2006 (%)



Source: SUNAT

Finally, improving economic conditions have resulted in increased employment. The CIA Worldfact Book 2007 notes that between 2003 and 2006, the unemployment rate in Lima fell from 9.4% to 7.6% and is predicted to fall to 7.2% for 2007.

Overall, Peru has enjoyed a period of economic growth since 2001/2002. Officials expect that high levels of economic growth will continue into the foreseeable future with the attendant economic benefits accruing to Peru and to Peruvians.

3. Evaluation Methodology

This Study Report has been prepared pursuant to the guidelines established by the APEC Member Economies. The Experts based this report on a review of Peru's IAP, their meetings with Peruvian officials in Lima, Peru between September 23 and September 28, 2007, and their subsequent research and review of Peru's legislation, regulations, administrative policies, practices and measures undertaken to achieve their Bogor goals.

In accordance with the requirements set down by the Member Economies, the Review Team adopted a non-controversial and balanced approach in its assessment of Peru's progress. The Review Team was assisted in this regard by a series of productive meetings with Peruvian officials held in Lima, Peru during the week of September 24, 2007. The Peruvian officials who participated in these meetings were uniformly open and forthcoming and greatly assisted the Review Team in understanding Peru's current regulatory system, the efforts that Peru has made to date and since 2003 to achieve further liberalization and Peru's plans for further liberalization as it moves forward. The Review Team gratefully acknowledges and wishes to thank Mr. Julio Chan, Ms. Vanessa Uchiyama and Mr. Diego Llosa for their efforts in having organized and presented a comprehensive schedule of meetings with officials over a relatively short period of time while allowing the Review Team a full opportunity to explore important issues through discussions with those officials.

4. Analysis and Comments on IAP

I. Tariffs

APEC Objective

APEC economies will achieve free and open trade in the Asia Pacific region by:

- a. progressive reduction of tariffs until the Bogor goals are fully achieved; and*
- b. ensuring the transparency of APEC economies' respective tariff regimes.*

Peru's Approach

Peru maintains a transparent tariff system that reflects the current harmonized tariff structure. Peru has steadily reduced its applied tariff rates through an *ad hoc* review process.

Peru does not maintain any tariff rate quotas, although it does maintain a price band system for agricultural products. Agricultural products covered by the price band system are classified under 47 of 7,351 tariff lines.

(i) Ad Hoc Tariff Review

Since 2000, Peru has reduced its applied tariff rates through an *ad hoc* review process. This tariff reduction exercise has a number of objectives: to reduce distortions caused by tariffs; to create greater efficiencies within the Peruvian economy; to support adaptation and innovation which rely on imports of capital goods; to increase consumer wealth by giving consumers access to products at lower prices; and, to establish a more predictable tariff policy. These *ad hoc* reviews are not conducted on the basis of any schedule and they are not required by Peruvian legislation, regulations or administrative guidelines. As a result of the recent *ad hoc* reviews, the average applied tariff rates have fallen from 13.5% in 2000 to 5.7% in October 2007.

Year	Nominal Average
2000	13.5%
2001	11.8%
2002	10.9%

2003	10.4%
2004	10.2%
2005	10.1%
2006	8.3%
October 2007	5.7%

The October 2007 *ad hoc* review reduced the average applied tariff to 5.7%. The review reduced the applied tariff on 49.76% of Peru’s tariff lines, representing approximately 70.46% of world average imports, to 0% applied duties and reduced a further 35.75% of tariff lines, representing 25.21% of world average imports share, to 9% applied duties. Consequently, the majority of imported products (95.67%), are subject to zero or low duty rates. In addition, the October 2007 tariff review resulted in lower tariff levels for industrial products. Peruvian officials consider that these 4 levels are comprised of 3 main tariff levels (0%, 9% and 17%).

Tariff	Tariff Lines	Imports	Share Tariff Lines	Share Imports
0	3,658	8,251,866,576	49.76%	70.46%
9	2,628	2,951,877,714	35.75%	25.21%
17	1,052	497,871,885	14.31%	4.25%
20	13	9,792,534	0.18%	0.08%
Total	7,351	11,711,408,709	100.00%	100.00%

- Peruvian imports average from the world between 2004 and 2006.

The current average applied tariff is 5.7%. Based on the progress made to date, Peruvian officials believe that the average applied tariff will be approximately 3% by 2020. This average applied rate is determined based on a combination of the MFN duties applied by Peru and the more preferential rates imposed through Peru’s Free Trade Agreements. Although Peruvian officials currently estimate that the average applied tariff will be approximately 3% in 2020, they note that if Peru successfully negotiates Free Trade Agreements that result in further tariff liberalization the average tariff rate applied could be lower. Peruvian officials believe that tariff liberalization at or below 3% by 2020 will achieve Peru’s Bogor goals.

Peruvian officials advised that there were no current plans to conduct a review of the most recent tariff reduction exercise to determine if it would be possible and appropriate to engage in a further round of tariff reductions. However, we were also advised that the customs tariff is not

considered significant in terms of revenue-generation. Therefore, there is no restriction on Peru's ability to continue to reduce overall tariffs.

Peru has reduced its applied tariff rates, but has generally left its bound tariff rates for industrial products intact. Currently, the bound tariff rate for most products is set at 30%. Consequently, there is a gap between Peru's bound and applied tariff rates that will widen if Peru continues to reduce its average applied rates, as anticipated. Peruvian officials indicated that bound tariff rates would only be reduced through multilateral negotiations; not through unilateral action.

(ii) Treatment of Agricultural Products

Peru's bound duty rate on 29 agricultural products is currently set at 68%. This is higher than the 30% bound duty rate that applies to all other agricultural and industrial products. The higher rate was reduced to 68% through the phased reduction of tariff rates that applied through the WTO Agreement on Agriculture. Peruvian officials noted that reduction to the 68% bound level was achieved in 2004 and was accomplished by harmonizing to this bound rate from significantly higher bound rates (up to 180%) that prevailed in the period prior to 2003. There is no plan to unilaterally reduce the bound rates further; any reductions that are made will result from agreement with Peru's trade partners, notably at the WTO.

Peru has supported agricultural development by reducing tariffs on agricultural machinery and equipment from 12.0% to 0% and by reducing the tariff on imports of agricultural inputs from 12.0% to 0%. "In 2005, some agricultural tariffs were eliminated for agricultural inputs and machinery."¹³

In 1990, Peru implemented a price band system for agricultural products that imposes the basic applied tariff rate of 9% or 17% on most products and assesses. A surcharge of 5% on some sensitive products such as wheat, rice and sorghum were eliminated during 2007. The duties

¹³ Republic of Peru, Prospectus Supplement to Prospectus dated January 17, 2007, February 15, 2007, pg 33.

imposed on agricultural products are well below Peru's bound tariff rates.¹⁴ In response to questions, Peru noted

“In 1997, the tariff additional over-percentage was created by Supreme Decree No 035-97-EF, and its denomination was “additional tariff right” (Supreme Decree No 017-2007-EF). At this moment the rate of the additional tariff right is of 5% and it is applied on CIF import value.

The additional tariff right was applied to 323 tariff lines until July 2007. At the moment, it is applied to only 89 tariff lines. Of these, 27 lines are in the level of 17% (12% + 5%) and 62 lines are in the 25% level (20% + 5%).”¹⁵

Peru's applied tariffs are significantly lower than the 68% bound duty rates. The following chart provides effective tariff rates on agricultural products for the period January through August 2007.

TABLE N° 1
EFFECTIVE TARIFF (%)

MONTH	WHEAT	MAÍZE *	RICE *	SUGAR *	DAIRY *
Jan. 2007	16.1	0.0	20.6	0.0	9.0
Feb. 2007	15.0	0.0	21.3	0.0	7.0
Mar. 2007	16.3	0.0	22.5	0.4	21.4
Apr. 2007	16.2	0.0	22.5	0.1	6.8
May. 2007	15.4	0.0	21.9	0.5	1.5
Jun. 2007	17.0	0.0	20.5	0.9	4.8
Jul. 2007	0.0	0.0	18.4	0.7	1.6
Aug. 2007	0.0	0.0	17.5	0.6	0.2

(*) In “Sistema Peruano de Franja de Precios”.

¹⁴ Peru, Bi-weekly Bulletin, Agriculture and Agri-Food Canada, June 1, 2007, http://www.agr.gc.ca/mad-dam/index_e.php?s1=pubs&s2=bi&s3=php&page=bulletin_20_06_2007-04-20&PHPSESSID=7592f6449735271340620c1f57e4420dpage 2

¹⁵ Peru, Response to Question Q7. Consolidated Questionnaire, Annex B

(iii) The Price Band System

Peru has maintained a price band system to control the prices of some imported agricultural products since 1991. The Food and Agriculture Organization (FAO) has described Peru's price systems as, "[t]he most important exception to the elimination of non-tariff trade restrictions ..."¹⁶

As first established, the Variable Specific Duty system, was triggered by price reductions below a specific floor level. Duties were imposed on the imported product whenever prices fell below the floor price trigger mechanism. The measure was amended in 2001 to introduce a price ceiling that reduced duties when prices rose above the ceiling trigger price level. The FAO describes application of the price band system as follows:

"In Peru, application of the price band means that 29 items are subject to variable specific duties intended as a price stabilization and protection mechanism. The variable duties are over and above the additional 5 percent tariff surcharge applied to these same commodities. The scheme in Peru was one of variable tariffs, that is, a band "without ceiling", until recently. In June 2001, a new price band system was established (El Peruano, 2001); the new system affects five product groups: milk, maize, sorghum, rice and sugar. It is applied as follows:

Every month, a new set of reference prices (floor-ceiling prices) for each relevant commodity is published; if the price of a commodity (say maize) falls below its floor price, the system is triggered, and a new specific duty is imposed to bring the maize price back to the floor price level. This additional tariff is valid for all shipments of maize until the system is revised with the publication of the new set of trigger prices."¹⁷

Peruvian officials have advised that they do not accept the FAO's characterization of the price band system because it does not consider the ceiling if the price of a commodity (say maize) goes above its ceiling price, the system is triggered, and a negative specific duty is imposed to bring the maize price back to the ceiling price level. Peruvian officials consider that the limit of the sum of *ad valorem* duties and this negative specific duty is zero (custom duties cannot be negative).

¹⁶ WTO Agreement on Agriculture: The Implementation Experience, FAO Economic and Social Department, <http://www.fao.org/DOCREP/005/Y4632E/y4632e0p.htm>,

¹⁷ WTO Agreement on Agriculture: The Implementation Experience, FAO Economic and Social Department, <http://www.fao.org/DOCREP/005/Y4632E/y4632e0p.htm>

Canada's Department of Agriculture and Agri-Food has described the Peruvian system as follows:

“The Peruvian price band is a variable import tax which assures that the import price of sensitive commodities, after payment of the levy, is equal to a pre-determined minimum payment of the levy, is equal to a pre-determined minimum import price. The levy, which is expressed in US dollars per metric tonne, is the difference between the floor price and reference price plus an adjustment for insurance, freight and inflation. Both the floor price and the reference price are published by Peru's Ministry of Economy and Finance every fifteen days. The price band also has a ceiling price, which protects the industry against increases in international prices. In this way, the floor and ceiling prices effectively create a band, or price range.

As with the Andean Price Band system, the Peruvian Price Band system compensates for changes in the world price of importable products. To construct the price band for a specific agricultural product, a reference price is determined from international indicator markets. If the international price of product falls within the applicable price band, no change is made to the applied tariff rate. However, if the international price falls below a pre-determined floor price, the tariff rate is increased to bring the imported price within the price band. Conversely, if the US Gulf price of corn is above a pre-determined ceiling price, the tariff rate is decreased. Since Peru uses the US Gulf corn price as a reference for the corn tariff, 2006-2007 US corn exports have been entering Peru with no tariff, due to high US corn prices.”¹⁸

As of 1998, the Price-Band system applied to agricultural goods classified under 29 tariff items. By 2002, the measure applied to agricultural products classified under 45 tariff items and divided into the following groups: maize, rice, sugar, sugar substitutes and some dairy products. Peruvian officials advised that despite extension of the Price Band system from 29 to 45 tariff items, there was no change in the actual scope of agricultural goods subject to the measure. They noted that the change was due to adoption of the Harmonized Tariff System which increased the number of tariff items that covered the same group of products at 6 digit level.

Peruvian officials consider that the price band system insulates Peru from international price fluctuations and, thus, stabilizes domestic prices. The measure benefits producers by stabilizing prices when they are low and protects consumers from high priced goods. The price band system is part of Peruvian government policy. There are no plans to change the price band.

¹⁸ *Peru*, Bi-weekly Bulletin, Agriculture and Agri-Food Canada, June 1, 2007, page 2 - 3

(iv) Assessment

Peru has made steady progress toward liberalizing its applied tariffs through unilateral reductions in its applied rates. Officials estimated that by 2020 the average applied tariff rate will be approximately 3% and could be lower depending on the impact of Peru's multilateral, regional and bilateral trade agreements. There is no reason to believe that Peru cannot achieve its Bogor objectives by 2020.

However, it is important to note that the reductions in the applied tariff rates achieved to date have resulted from an *ad hoc* process. It is possible that this process could be abandoned or modified in future with the result that the Bogor goals are not achieved. It is also possible that Peru may find it necessary to increase its applied duty rates to respond to changes in economic conditions affecting the country and its economy.

Relying on an *ad hoc* process rather than on a set schedule makes it somewhat more difficult to definitively state that Peru will achieve its Bogor goals with respect to tariff liberalization. Peruvian officials clearly intend to proceed on the path of tariff reduction. So long as the political will to achieve these goals remain, we see no reason why Peru would not achieve its Bogor goals by 2020. The 2003 Expert's Report suggested that Peru establish a plan to achieve its Bogor goals. While it may be difficult for any country to establish a plan that will guide its actions through 2020, it would be worthwhile to take steps to institutionalize the *ad hoc* review system so that it would proceed on a more regular schedule and would be applied on the basis of specific factors.

The decision to maintain a price band system for agricultural products raises separate concerns. Peruvian officials noted that the system currently has little impact on imported agricultural products. This is largely because recent increases in commodity prices have resulted in imports above the established ceiling price. However, as it is unlikely that commodity prices will always be favourable, there may come a time when the price band system could have an impact on shipments to Peru.

II. Non-Tariff Measures

APEC Objective

APEC economies will achieve free and open trade in the Asia-Pacific region by:

- a. progressively reducing NTMs to the maximum extent possible to minimize possible distortion to trade;*
- b. in respect to WTO members;*
 - Elimination of any measures inconsistent with WTO agreements*
 - Full compliance with WTO agreements in accordance to WTO commitments;*
 - and*
- c. ensuring the transparency of APEC economies' respective non-tariff measures*

Peru's Approach

Peru maintains relatively few non-tariff measures. Peru has no import levies, export levies, discretionary import licenses, automatic import licensing, discretionary export licensing, voluntary export restraints, export subsidies, minimum import prices (other than those applied to some agricultural products through the price band system) or other non-tariff measure.

Peru does not maintain quantitative restrictions except for those applied to protect cultural heritage, biodiversity, sanitary and Phytosanitary measures. Peru prohibits imports and exports of cultural heritage pursuant to UNESCO obligations. Peru protects biodiversity by protecting species at risk by prohibiting imports and exports of animal and plant life pursuant to CITES obligations. Peru prohibits imports of products to protect human, animal or plant life or health and imposes such import prohibitions in a manner that is consistent with the obligations in the *WTO Agreement on Sanitary and Phytosanitary Measures* and GATT 1994 Article XX(b). These quantitative restrictions are maintained consistent with international obligations and should not be considered as measures that violate international trade obligations.

Peru imposes excise taxes and charges on fuel oils, cigarettes, liquors, beer and wines. These excise taxes are equally applied to imported and domestic products and, consequently, is consistent with the GATT national treatment obligation.

Peru continues to maintain a number of non-tariff measures. The Discussant's comments on the 2003 IAP noted that Peru restricts exports of rough wood, guano and certain animals. Peruvian officials advised that the export restrictions on guano exports have been rescinded and that the export restrictions on certain animals are imposed pursuant to CITES obligations, but that the export restrictions on rough wood remains in place. Therefore, Peru maintains the following non-tariff measures

- (i) the price band system
- (i) export restrictions on rough logs
- (ii) import restrictions on certain used goods
- (iii) textile and apparel labeling requirements

The Price Band System

The price band system applied to agricultural products may constitute a non-tariff measure to the extent that it imposes either a minimum price system or a variable import levy. The price band system is discussed in Section I: Tariffs, above.

Round Wood Export Restrictions

Rough wood describes logs produced by the logging industry and is used as the input in the production of lumber. Rough logs cut in Peru may not be exported to be processed into lumber. Consequently, all subsequent processing must be undertaken in Peru. There is no indication that Peruvian officials intend to eliminate this export measure.

Used Good Import Restrictions

Peru prohibits imports of certain used goods, including used clothing and shoes (other than charitable donations), used tires, used cars over five years old and used heavy trucks (weighing 3

tons or more) over eight years old.¹⁹ Peruvian officials advised that the measures are applied to some used goods that constitute “radioactive energy sources” and are justifiable pursuant to GATT 1994 Articles XX and XXI for health and security reasons.

Used cars and trucks that are imported into Peru are subject to a 30% excise tax. New cars sold in Peru are subject to a 10% excise tax. Imported used cars and trucks that are refurbished in an industrial centre in Southern Peru (poor and frontier zones) can avoid paying the excise tax. Peruvian officials commented that the taxes are applied to all new and used cars and, thus, are consistent with GATT obligations. Peruvian officials also noted that the refurbishment at issue related to conversion of used cars and trucks from right hand to left hand drive controls. Consequently, the requirement to refurbish used cars and trucks would be restricted to imports from countries that drive on the left. Officials also advised that the program is not a subsidy, but is an incentive to support manufacturing in the south. They considered that the program is not successful.

Textile and Apparel Labelling Requirements

Peru requires that the name and address of the importer or distributor be included on textile and apparel products and footwear. Because it is difficult, if not impossible, to know the name and address of an importer or distributor when the labels are originally added to the products, these goods have to be re-labeled in Peru.²⁰ Officials noted that the measure as imposed on footwear was required to ensure that there was no circumvention of a safeguard. Officials also advised that they considered this to be a technical regulation rather than a non-tariff measure.

(ii) Assessment

Peru maintains few non-tariff barriers and is a very open state but those non-tariff barriers that do exist have remained in place and virtually unchanged since the 2003 IAP Report. The only

¹⁹ Peru, 2007 National Trade Estimate Report on Foreign Trade Barriers, Office of the United States Trade Representative, 2007, page 461 - 462

²⁰ Peru, 2007 National Trade Estimate Report on Foreign Trade Barriers, Office of the United States Trade Representative, 2007, page 462

progress made on liberalization of non-tariff measures since the last IAP Report is elimination of the export restriction on guano. There are currently no plans to amend or eliminate the other non-tariff barriers.

III Services

APEC objective

APEC economies, in accordance with the APEC Policy Framework for Work on Services, will achieve free and open trade and investment in the Asia-Pacific region by:

- a. progressively reducing restrictions on market access for trade in services;*
- b. progressively providing for inter-alia most favored nation (MFN) treatment and national treatment for trade in services;*
- c. providing, in regulated sectors, for the fair and transparent development, adoption and application of regulations and regulatory procedures for trade in services; and*
- d. recognizing the role that e-commerce plays in the supply and consumption of services.*

Peru's approach to trade in services

Peru's economy is open to foreign service providers. Peru has unilaterally removed most of its market access and national treatment restrictions with respect to trade in services since 1998, and has actively participated in the multilateral trade liberalization efforts within the WTO.

Peru retains restrictions or MFN discrimination only in diffusion services (radio and TV broadcasting) and some transport services. There are horizontal-sector restrictions that local goods or services companies should not exceed a 20% limit of foreign hired personnel and their wages should not exceed 30% of company payroll (some exceptions apply for both rules). Peru does not apply any foreign exchange control on the movement of capital. There are no other generic requirements applied to trade in services.

Since 2004, as part of service policy, Peru is constantly incorporating ambitious services provisions in its bilateral FTA negotiations²¹ with an aim to guarantee clear and predictable rules to services providers and investors, and at the same time to obtain similar market access conditions with its trading partners.

²¹ Since 1998, Peru has engaged in the services chapter negotiations within the Free Trade Area of the Americas, and bilateral Free Trade Agreements with the USA, Singapore and Chile. Peru maintains negotiation procedures with Mexico, EFTA countries, Canada, the European Union and Thailand.

Regulatory framework and decision-making process

A number of different public institutions, mostly Ministries, are responsible for governing services trade policy. Among them, the Ministry of Economy and Finance formulates government general economic policy. The Ministry of Foreign Trade and Tourism (MINCETUR) is responsible for pursuing trade negotiations in coordination with other involved sectors.

Business Services

For accounting, architecture, engineering and legal services, there are neither nationality nor residency requirements to obtain an operation license, nor restrictions to commercial presence of foreign investment. However, foreign professionals have to comply with basic requirements that they must register as qualified members of Peruvian professional associations and have professional degrees revalidated in Peru.²².

Foreign architects and engineers who provide temporary professional services, they must pay an access fee to the Peruvian professional associations higher than the fee imposed on Peruvian professionals. Foreign entry in architecture service is also subjected to time restrictions - the minimum period granted is three months and the maximum is twelve months renewable once up to twelve months. Foreign engineers are required to have a contract signed by a company established in Peru.

Audio-Visual Service

Some domestic regulations apply to broadcasting services (radio and television). According to the Peruvian law of the Artist (Law N° 28131), broadcasting enterprises must dedicate at least 10% of their daily program to the diffusion of folklore, national music and television programs

²² If there is an International Agreement of Reciprocity in the Professional Exercise of Architects between Peru and the country where the applicant studied, it is not necessary to revalidate the title or degree.

related to Peruvian history, literature, culture or national reality. They are also requested to dedicate at least 30% of its programming to local production.

Foreign citizens are not allowed to hold authorizations or licenses to supply free over-the-air broadcasting services, and may hold no more than 40 percent of the capital of a corporate body that holds such an authorization or license.

Some discrimination to national treatment is also present in film-making. Peruvian law requires that 80% of artists and film technicians taking part in any production must be Peruvian nationals.

Express Delivery and Postal service

Supreme Decree N ° 015-2007-MTC 09/05/07, published in May 2007, eliminates access barriers for postal services, including express delivery. The barriers were eliminated to reduce costs and to ensure predictability to the economic agents. The provision of express delivery and postal services given in a concession is granted for a minimum of 5 years and a maximum of 20 years (renewable) by the Ministry of Transportation and Communications (MTC).

There is no discrimination against foreign providers except that they must have a commercial presence within the country and have a legal address in Peru. There is no MFN discrimination.

Telecommunications

According to Peru's legislation, the State promotes free competition with respect to the provision of public telecommunication services. Regulation is focused on controlling abuse of market power and restrictive practices.

The Ministry of Transportation and Communications (MTC) is responsible for concession and authorization. MTC classifies telecommunication services into following categories that are granted either under concession or authorization:

- Carrier services: involving essential facilities (networks), granted under concession.
- Final services (such as phone services): granted under concession.
- Cable services: granted under concession.
- Broadcasting services (such as TV and radio): requiring authorization of MTC when these services are considered private services of public interest.
- Operating a private service: an authorization is needed.
- Value added services: required to be registered.
- The assignation of the radio electric spectrum proceeds when a concession or authorization is given.
- The satellite capacity provision: regulated through a register under the MTC.

In 2007, MTC enacted Guidelines (Supreme Decree N° 003-2007-MTC) to develop and strengthen the competence and to support the expansion of the public services of telecommunications.

The Supervisory Organization for Private Investment in Telecommunication (OSIPTEL) is responsible for supervising the telecommunications sector. OSIPTEL has also published Rules (Resolution N° 016-2007-CD/OSIPTEL) for the elimination of pre-selection by default in the long distance phone service and for the encouragement of competition in the market.

As described in audio-visual service, the Peruvian Government imposed nationality requirements and a foreign ownership ceiling on broadcasting service providers.

The supply of telephone services based on calling within Peru to obtain a call back with a dial tone from an overseas network is not permitted.

There is no restriction or discrimination against foreign investors or providers, except that public telecommunication services providers must have a local presence.

Peru has committed to continue the process of developing a competitive telecommunications market. For instance, OSIPTEL has established a time frame to lower average mobile termination rates by more than half over a period of four years.

Construction and Related Engineering Services

Foreign construction service providers can carry out any kind of construction works in Peru, provided they have permission from the local municipality. Public tenders are open to all bidders. Any foreigner company may participate in a tendering procedure at any time. Peruvian bid evaluators award bonus points worth 20% of the total technical and economic valuation of the proposal for proposals to supply Peruvian goods and services.

Education Services

The Peruvian Government promotes free education services and reserves the administration and control of all public institutions. General Law of Education (Law N° 28044) regulates all educational activities in Peru. Universities and Superior Institutions are ruled by specific laws and authorized by the National Council for the Authorization of University Functioning (CONAFU), while the Ministry of Education supervises non-university institutions.

There is no discrimination between nationals and foreigners in private education services. According to Law of the Professorship (Law 24029), professionals titled abroad must revalidate their degree in a Peruvian Pedagogic Superior Institute or in a Peruvian University. There are also some exemptions to the MFN treatment in the framework of the Andean Community and others Mutual Recognition Agreements.

Energy Services

In Peru, energy generation services are carried out under free competition rules, while energy transmission and distribution are regulated in fixed rates by the Supervisory Organism of Investments in Energy and Mines (OSINERGMIN). National legislation is being adapted to

include competition mechanisms and price protection for energy generation services and for promoting energy transmission investments. New laws will also be established to promote the installation of cogeneration plants with natural gas and generation plants with renewable energy.

To obtain exploration contracts, the General Law of Hydrocarbones (Law N° 26221) requires that foreign companies have a commercial presence with an address in Lima, and name an Agent Chief Executive with Peruvian nationality. Foreign companies are also required to be enrolled in the Public Registries and to name a Peruvian legal representative with address in Lima. Shipping of oil by foreigners is only allowed if the company meets the similar requirement.

Financial Services

The principal law regulating the financial sector is the “General Law of the Financial System and the Insurance System and Organic of the Superintendence of Banking, Insurance and Private Fund Administrators” (Law N° 26702). The Superintendence of Banking, Insurance and Private Pension Funds Administrators (SBS) issues rules concerning operational requirements applied to the financial, insurance and private pension systems, and also takes an active role in promoting competition, improving supervisory framework and providing better responses to public inquires and consultations.

Economic and financial indicators show Peru’s financial system is solid and solvent. In 2007, non-performing loans as a percentage of overall loans is only 2%. The Peruvian financial regulations and supervisory process follow international standards such as the Basel Principles for Banking Supervision, principles for insurance services of the International Association of Insurance Supervisors (IAIS), and the international principles related to stock exchange services (OIOSCO). Additionally, the accounting rules in Peru are also in accordance with international standards.

All financial companies seeking to provide financial services in Peru must be incorporated as a stock company, and require the authorization from SBS and follow the regulatory procedures,

including the specific reference to the activities that they seek to develop, a minimum capital (according to the type of financial entity) and a proved moral behavior.

In general, there is no limitation on national treatment in banking, insurance and private pension funds. Law N° 26702 establishes that foreign investment in financial companies will receive the same treatment as domestic capital, subject, if applicable, to international agreements on the matter. Neither is there discrimination with respect to the four modes of supply on banking and insurance companies.

Health Related and Social Services

Health service in Peru is fairly open. According to law N° 26842 (General Law of Health), all foreign health establishments have to satisfy requirements set by the Ministry of Health to provide health related and social services in Peru.

With respect to market access, foreign providers must obtain the documents required by local suppliers and present additional documents, such as financial statements and investors' affidavits for the previous two years to obtain government authorization to provide the service.

Recreational, Cultural and Sporting Services

In general, most cultural services are highly deregulated in Peru, except some such as museums, cultural performances and casinos that need an authorization and qualification requirements.

There are some restrictions or limitations on foreign entry. For instance, a foreign artist must have an artistic work contract notified to the Ministry of Labor and Employment Promotion (MINTRA) and an Inter-syndical Pass from the Peruvian Union to get an artist visa. He/she is also requested to be affiliated to the Social Rights Fund of the Artist and to a national health provider, whose procedures and expenditure are taken by the employer. There is an exception for the foreign artist that performs alone, only if his/her permanency is not more than 20 days.

If the foreign artistic performance exceeds the 3 months, the contract must be modified according to the Supreme Decree N° 689 (Law of the Hiring of Foreigners).

Some cultural performances have specific restrictions. For example, any national live performance or national artistic audiovisual production must be comprised at least of 80% national artists; the other 20% may be comprised of non-resident foreign nationals. National artists shall receive no less than 60% of the total payroll for salaries paid to artists.

Tourism and Travel Related Services

Peru is implementing the transfer of tourism functions from the Ministry of Foreign Trade and Tourism (MINCETUR) to regional governments. According to the current legislation, Peru promotes free competition between foreign and national service providers. There is no discrimination for foreign entry and MFN treatment except for the following.

- Law N° 28529 establishes that tourist guides titled abroad, nationals or foreigners, are required to hold a degree recognized by Peruvian law.
- Supreme Decree 029-2004-MINCETUR requires foreign travel agencies must be associated with national travel agencies and this must be communicated to the competent regional body.

MINCETUR has approved the *Guidelines for the Development of Communitarian Rural Tourism in Peru*, and has been working in *Manual of Good Practices in Service Management for Lodgments, Travel Agencies and Tourist Guides* and *Manual of Good Environmental Practices for Lodgments*, incorporating the protection of natural environment and preservation of indigenous cultures and has finished the CALTUR (National Plan for Quality in Tourism).

Transportation Services

The Ministry of Transport and Communications is responsible for policies related to liberalization of the transportation sector. The Supervisory Transport Organization (OSITRAN) is the regulatory public entity.

Requirements and treatments differ among the four main transportation service sectors (aerial, maritime, rail and road). The Government of Peru promotes free competition in railroad and road transportation services and there no restriction on foreign investment participation in either sector. Band price mechanisms introduced in 2001 in road service have been abolished. However, many reservations with respect to foreign entry and national treatment exist in the air and maritime services sector. Moreover, participation of foreign air and shipping companies in the transport of goods or passengers will only be granted on the base of strict reciprocity. Finally, there are also some exemptions to the MFN treatment in the framework of the Andean Community and other International Transport Agreement in air and road service.

With respect to commercial aviation services, the current legislation reserves services provision to nationals but it considers some exceptions. At least half plus one of the directors, managers, and persons who control or manage the enterprise have to be Peruvian nationals. The percentage of capital owned by foreigners may be up to 49% at the beginning of operation, and can increase up to 70 % after 6 months of operations. Foreign enterprises providing international air transport in Peru must present some additional documents. There are also some exceptions for public security or national interest.

International maritime transport can be provided by foreign shipping companies. However, only a “national ship owner” or “national ship enterprise” may supply maritime cabotage services (including transport by lakes and rivers). At least 51 percent of the subscribed and paid-in capital must be owned by Peruvian citizens. The chairman of board of directors, a majority of directors, and the general manager of a national ship enterprise, and the captain and at least 80% of crew of the Peruvian-flagged vessels must be nationals and residents in Peru. Only Peruvian citizen may be a licensed harbor pilot or registered as a “port worker”.

Other services

Peru has an open and non-discriminatory treatment to distribution, environmental and medical services,

Assessment

During the past four years, Peru has maintained commitments to provide market access and non-discriminatory treatment in a substantial number of service sectors. It is actively participating in the WTO GATS negotiations as well as several bilateral trade agreements, both of which significantly eliminate trade and investment restrictions and strengthen the competitiveness in service sectors. Peru also achieves in increasing regulatory transparency in services.

In the future, more work could be done to advocate mutual recognition and improve fair and transparent assessment of foreign qualifications for the purposes of access to professional practice and for general employment in business, education and tourism services. Peru may also consider the possibility of reducing capital share limitation and employment restrictions in audio-visual, cultural and transport services.

In financial and telecommunication sectors, it is very important to consolidate legal and supervisory framework and to strengthen capacity-building of administrative bodies to promote competition and maintain stability. Regulations should be focused on controlling abuse of market power and restrictive practices.

IV. Investment

Peru's Approach

Peru generally maintains an open investment system. Most areas are fully open to foreign investment and foreign investors receive a number of benefits. The main legal provisions regarding investments are set out in the Peruvian Political Constitution, the Foreign Investment Promotion Law (Legislative Decree No. 662) and Supreme Decree N° 162-92-EF, approving the Regulations for Private Investment Guarantee Systems. The core regulations for foreign investors include the following:

- (i) There is no requirement for prior authorization required of foreign investments.
- (ii) there is no minimum amount that must be invested, except in financial services to safeguard public funds;
- (iii) foreign investors are entitled to non-discriminatory treatment with respect to establishment, growth and operation and protection of their investments.
- (iv) there are few sectoral restrictions on foreign investors and few activities reserved for Peruvian nationals investors;
- (v) Foreign investors are guaranteed property rights by the 1993 Constitution and may not be deprived of those rights except by reason of national security or public need, expressly declared by law, and on the payment of compensation calculated on the basis of a fair-value indemnity for the expropriated property, including redress for any possible damages. Proceedings have been instituted before the local courts to challenge the value of property which the government has established in the expropriatory procedure;

- (vi) Foreign investors have access to local courts on the same basis as Peruvian nationals and are entitled to submit investment disputes arising to domestic or international arbitration bodies;
- (vii) Foreign investors have the right to remit abroad the full amount of capital generated from registered investments²³ including capital generated from the sale of shares, participation of rights, capital reduction or partial or total wind-up of companies and the full amount of verified dividends or net profits generated from the investment;
- (viii) Foreign investors and their investments are not subject to performance requirements beyond those imposed on domestically-owned investment in like circumstances; and
- (ix) Foreign investors have the right to obtain legal stability agreements prior to making their investment, which guarantee a stable income tax regime and stable labour and export laws for the investment.

Legal Stability Agreements are agreements made between the Peruvian State and the investor, through which Peru guarantees legal stability to foreign investors and to their enterprises investments.

With respect to foreign investors, Legal Stability Agreements guarantee: (i) stability of the Income Tax regime in force and applicable to investors when the agreement is concluded; (ii) stability of the System of free availability of foreign currency and remittance of profits, dividends and royalties; and, (iii) equal treatment, by which the national legislation does not discriminate against investors due to their status of foreign person.

²³ Registered investments are those registered with PROINVERSION (Agencia de Promocion de la Inversion Privada), the Peruvian Government entity responsible for investment promotion and investment policy.

With respect to enterprises invested in by foreign investors, Legal Stability Agreements guarantee: (i) stability of the Income Tax regime in force when the agreement was concluded; (ii) stability of the special regimes related to export applicable when the agreement was concluded; and, (iii) stability of the system of labor engagement in force when the agreement is concluded.

To sign a legal stability agreement, the investor must agree to fulfill one of the following commitments: (i) invest \$5 million within two years unless the investment is made in mining or hydrocarbons, in which case the investor is required to invest \$10 million within two years; (ii) acquire more than 50% of shares of an enterprise participating in a privatization process; or, (iii) make capital contributions in a concession contract, fulfilling the investment requirements established in the pertaining contract. The Agreement will generally remain in place for ten years, but if the investor has been given a concession by the Government, the Agreement can remain in effect for the whole period of the concession, up to 60 years. Peru introduced Legal Stability Agreements in 1992. Currently, there are more than 600 Legal Stability Agreements in place with investors.

PROINVERSION (Agencia de Promocion de la Inversion Privada) is the Peruvian Government agency responsible for promotion of domestic and foreign private investment in Peru and for the development of investment policy, in accordance with the guidelines established by the Ministry of Economy and Finance, the economic plans and integration policy.

“PROINVERSION’s scope of action includes promoting concession granting among its investment promotion responsibilities, such as developing public-private partnerships, asset sales or fostering joint ventures or management agreements for State-owned interests or property. PROINVERSION is responsible for encouraging both local and foreign **private investment**, in order to foster competitiveness and sustainable development in Peru to improve the welfare of Peruvian people; it provides information and guidance concerning the possibilities for investing in Peru, solves inquiries and organizes the agenda of visiting potential investors in Peru. PROINVERSION also advises and assist investors on the procedures for investing, promotes local business initiatives among foreign potential investors, and taps alternative foreign funding sources for local investments.

Additionally, PROINVERSION proposes and executes policies on foreign investment. It signs agreements to provide State-backed guarantees to investors on the stability of basic rules governing their investments, identifies obstacles to investment, and proposes measures to remove them. This is possible because PROINVERSION's Board includes seven Ministers of State in the production and investment fields (the Prime Minister, Minister of Economy and Finance, Minister of Foreign Trade and Tourism, Minister of Housing and Construction, Minister of Production, Minister of Energy and Mining and Minister of Transportation and Communications) and because PROINVERSION has signed cooperation and assistance agreement with several Regional and Local Governments."²⁴

Peru is an active participant in APEC and in international investment fora. Peru is currently a member of 32 Agreements and Conventions that address investment. Peru is actively negotiating a number of other Agreements and intends to enter into other negotiations over the next year (See Section XVI: Free Trade Agreements/Regional Trade Agreements)

There has been an increase in foreign investment in Peru since 2003. The 2003 IAP Report noted that foreign investment constituted 18.5% of Peru's GDP (29.9% of that investment was in the communications sector, 14.9% in industry and 13.67% in the financial sector). Data maintained by PROINVERSION shows that the total stock of foreign direct investment has increased from USD \$13.512 billion in 2003 to \$15.412 billion in 2007, an increase of 14.07%. By December 2007, investment was primarily made in the communications sector 30.80%, mining 19.60%, industry 14.69%, finance 13.24% and energy 10.37%.

There has also been an increase in private investment growth in Peru over this period. According to Ministry of Economy and Finance and Central Bank data, private investment has increased from USD \$9.203 billion in 2003 to USD \$19.400 billion in 2007, an increase of approximately 110.61%.

Peru does maintain some restrictions on foreign investment:

- (i) Article 71 of the Constitution prohibits foreigners from acquiring or owning through any other form of title, land, mines, forests, water, fuel or energy sources,

²⁴ APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 313 - 314

either directly or indirectly, individually or in partnership under penalty of surrendering that acquired right to the government or investments through any form of title within 50 km of the border. The restriction on investment and ownership in this 50 km strip is maintained for national security purposes. However, the prohibition is made subject to cases of public necessity declared through Supreme Decree approved by the Cabinet of Ministers. Consequently, it is possible to invest in the 50 km strip so long as the investment is deemed to be of public necessity by the Cabinet. Peruvian officials advised that a number of foreign investors have holdings and interests within the 50 km strip.

- (ii) Peru restricts foreign investment in air transportation services. Initial investments are limited to no more than 49% of the stock of an air services company but can increase to 70% of the stock after six months after the date of authorization of the enterprise to provide commercial air transportation services.
- (iii) At least half plus one of the directors, managers and persons who control or manage a domestic commercial aviation company must be Peruvian nationals, have permanent domicile in Peru or be normally resident in Peru;²⁵
- (iv) Foreign investors can only participate in national water transportation if they establish a company within Peru whose initial capital stock is at least 51% Peruvian. Likewise, the Chairman of the Board of Directors, the majority of the directors and the General Manager of the enterprise must be Peruvian nationals and be residents in Peru.
- (v) Foreign-flagged fishing vessels operating in Peruvian jurisdictional waters must hire a minimum of 30% of Peruvian crew;²⁶

²⁵ APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 320

²⁶ APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 319

- (vi) Peruvian flagged vessels must have a Peruvian captain and the crew must be comprised of at least 80% Peruvian nationals;²⁷
- (vii) Foreign investors are not permitted to hold majority ownership in broadcast media²⁸, however Peruvian officials have advised that this restriction has now been struck down by the Peruvian Constitutional Court.
- (viii) At least 30% on average, of the total weekly programs by free – to- air broadcasters between the hours of 5:00 and 24:00 must be produced in Peru.
- (ix) Free over-the-air radio and television broadcast companies must dedicate at least 10% of their daily programming to Peruvian folklore, music and series or programs produced in Peru on Peruvian history, literature, culture or current issues. These companies must hire a minimum of 80% of Peruvian national artists who shall receive no less than 60% of the total payroll for wages and salaries paid to artists and at least 80% Peruvian technical personnel who shall receive no less than 60% of the total payroll for wages and salaries paid to technical personnel;²⁹
- (x) Artistic audiovisual productions must be comprised of at least 80% Peruvian national artists and those artists must receive no less than 60% of the total payroll for wages and salaries paid to artists;³⁰
- (xi) Commercial advertising produced in Peru must have at least 80% Peruvian artists who shall receive no less than 60% of the total payroll for wages and salaries paid

²⁷ APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 320

²⁸ This restriction has recently been declared unconstitutional by the Peruvian Constitutional Court.

²⁹ APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 320

³⁰ APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 320

to artists and at least 80% Peruvian technical personnel who shall receive no less than 60% of the total payroll for wages and salaries paid to technical personnel;³¹

- (xii) Foreign employees may not comprise more than 20% of the total number of employees of a local company (whether it is foreign or domestically-owned) or more than 30% of the total company payroll.

There are currently no plans to amend or revise these investment restrictions.

Peru also applies a range of incentives for investment in various sectors that apply equally to both domestic and foreign investors. Companies engaged in the production of goods and services destined to be exported or whose sale attracts Value Added Tax (VAT) are entitled to a refund of the tax paid on imports and domestic acquisition of capital assets.³² Companies that sign contracts with the Government under sectoral laws for the development, exploration and/or exploitation of natural resources and companies that enter into concession contracts with government for the development of infrastructure works and public utilities are entitled to the Anticipated Recovery System of VAT with respect to imports and domestic acquisition of goods, services and construction contracts required for the execution of the project.³³

Peru has determined that agricultural development, including through investment, is a high priority and also promotes development of the aquaculture sector. Peru has developed incentives to support investment including tax incentives and preferential labour and social security measures.³⁴

³¹ APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 320

³² APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 315

³³ APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 315

³⁴ APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 315 - 316

Peru provides tax incentives to encourage investment in particular regions, including the Amazon Region, the Tacna Duty Free Zone and CETICOS (Centres of Export, Transformation, Industry, Commercialization and Services).³⁵

Peru's immigration measures now also include the "Rentier" migratory category, which is for investor immigrants. Consequently, it is possible for individuals to immigrate to Peru on the basis of their ability to make investments in Peru.

Assessment

Peru has taken significant steps to liberalize its investment regime. The current climate, which accords national treatment to investors in almost all areas, the pro-investment policies adopted by Peru, the investment promotion activities undertaken by PROINVERSION and the generally positive economic conditions enjoyed by Peru have all contributed to a net increase in foreign direct investment. As a result of its measures to liberalize its investment regime and to extend national treatment and investment protection to foreign investors, Peru has gone a long way toward achieving its Bogor goals and is continuing to expand its network of investment agreements. However, since 2003 there have been no steps taken to eliminate or modify the few restrictions on foreign investment and there are currently no plans to review those measures with an eye to their elimination or to amendment to reduce their effect.

³⁵ APEC, Guide to the Investment Regimes of APEC Member Economies, APEC Member's Group, 2007, Sixth edition, pg 316 - 319

V. Standards and Conformance

APEC Objective

APEC economies will, in accordance with the Declaration on APEC Standards and Conformance Framework and with the Agreement on Technical Barriers to Trade (TBT Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) attached to the WTO Agreement:

- a. align their domestic standards and international standards;*
- b. endeavour to actively participate in international standardization activities;*
- c. promote good regulatory practice for the preparation, adoption and application of technical regulations in the APEC region;*
- d. achieve recognition of conformity assessment including mutual recognition arrangements in regulated and voluntary sectors;*
- e. promote cooperation for technical infrastructure development to facilitate broad participation in mutual recognition arrangements in both regulated and voluntary sectors; and*
- f. ensure the transparency of the standards and conformity assessment of APEC economies.*

Peru's Approach

Peru has not yet fully achieved all of the APEC objectives, but it has made significant progress to achieving these objectives overall and in the period since the 2003 review.

Peru is aligning its standards with international standards, as appropriate. Peru bases its standards on relevant international standards unless there is a solid basis for deviation. If international standards are not considered to be applicable, officials will rely on regional standards or on well-recognized international standards. Approximately 12% of Peruvian Technical Standards (PTS) are not based on international, regional or other well-recognized standards. Peruvian officials advised that these standards were developed to address purely local conditions; mainly crops that are only found in Peru.

INDECOPI-CRT, Technical and Commercial Regulations Commission of INDECOPI, established in 1992, is responsible for Peru's Standardizing and Accreditation Systems and also

serves as the WTO enquiry point. Standards established by the Commission are voluntary. The most pressing objective of the Commission is to approve 200 PTS per year, at least 25% of which will be based on international standards. Approving these standards is priority because most of them apply to products that are exported from Peru. Over the past five years, INDECOPI has approved approximately 1,000 PTS. There are currently 4,070 PTS in stock. INDECOPI is pursuing an aggressive plan to review and update PTS which are over five years old.

Peru has also adopted an ongoing maintenance plan that requires that standards be reviewed every five years. Peru's IAP response notes that the objective of the maintenance program is to review and update approximately 2,500 PTS which have not been reviewed and are over five years old. Peruvian officials intend to complete this review by 2009. The purpose of the review is to ensure that the standards are relevant and conform to international obligations.

INDECOPI-CRT has accredited 36 testing and calibration laboratories, 12 product certification bodies and 2 system certification bodies according to ISO/IEC standards and guides. In addition, it is ready to accredit bodies for inspection and certification of persons.

Peru actively participates in international and regional standardization and accreditation activities, has taken steps to strengthen its participation in international standardization bodies and to participate in Mutual and Multilateral Recognition Agreements, specifically:

- (i) In 2007, INDECOPI re-established its full membership status in ISO. INDECOPI has an active plan for the conformation of ISO and IEC mirror committees and also became a PASC member.
- (ii) INDECOPI is a signatory of the WTO TBT Code of Good Practice for the Preparation, Adoption and Applications of Standards.
- (iii) Peru is signatory of Decision 506 of the Andean Community, which accepts and recognizes, among Bolivia, Colombia, Ecuador and Peru, product certification in conformance to existing technical regulations;

- (iv) Peru intends to participate in the APEC Mutual Recognition Agreements, in particular, the Food MRA;
- (v) Peru's Ministry of Agriculture has bilateral recognition agreements with the Chilean Ministry of Agriculture regarding sanitary measures concerning fruits, with China regarding sanitary measures concerning animals and agriculture and with New Zealand regarding sanitary measures;
- (vi) Peru joined the IAAC (InterAmerican Accreditation Cooperation) Multilateral Recognition Agreement for the accreditation of quality management system (QMS) certification bodies in August 2006;
- (vii) In 2007-2008 Peru intends to become a member of ILAC, IAF, APLAC (Asia Pacific Laboratory Accreditation Cooperation) and PAC (Pacific Accreditation Cooperation).
- (viii) In 2007-2008 INDECOPI intends to become a signatory body of the PAC and IAF FMR for the accreditation of quality management system (QMS) certification bodies;
- (ix) In 2008-2009, INDECOPI intends to become a signatory body of the IAAC, APLAC, and ILAC MRA for the accreditation of testing laboratories and of the PAC and IAF MRA for the accreditation of product certification bodies.

With respect to sanitary and phytosanitary measures, Peru is also a member of the International Plant Protection Convention, the World Organization for Animal Health (OIE) and the Codex Alimentarius Commission and participates in the WTO SPS Committee.

While Peru is actively seeking to expand its participation in mutual and multilateral recognition agreements, Peruvian officials noted that appropriate measurement traceability is required to seek international recognition of laboratory accreditation. Officials are seeking to strengthen the national metrology laboratory to address this issue.

Peru seeks and promotes good regulatory practice. The Technical and Commercial Regulations Commission is responsible for all standards other than SPS measures. It supports the work of the Ministry of Foreign Trade and Tourism (MINCETUR) and other bodies on technical matters

under the TBT Agreement. MINCETUR is coordinating a government initiative to develop an inventory of technical regulations under the Andean Community. The National Service of Animal and Plant Health (SENASA) is responsible for food safety of fresh products. The National Directorate of Environmental Health of the Ministry of Health (DIGESA) is responsible for food safety of industrialized food products. The Fishing Technological Institute is responsible for food safety of hydrobiological products. Through these bodies Peru strives to ensure that its standards and regulations comply with international obligations in the WTO (SPS and TBT Agreements) and in the CODEX and OIE. Their regulations are mandatory.

Peru ensures transparency by publishing all standards, including publication prior to adoption so that there is an opportunity for public comment on the proposed standards. Peru participates in the Andean Community website that centralizes notifications and technical regulation proposals from the Andean Community member countries. Peru has also instituted an outreach program to promote the use of and adherence to standards. The outreach program has annual objectives, including training and events that are intended to explain and promote standards. Generally, three to four events are held each month.

The 2003 Expert's Report noted that Peru does not participate in an MRA with APEC members because of fiscal austerity measures imposed by Government. Peruvian officials noted that budgets and expenses are still tightly controlled, but that they are pursuing greater participation in international standardization and accreditation activities and are working to ensure appropriate budgets to support these activities. However, because standards and conformance are important to exports, it is anticipated that while budgets may be tight, sufficient resources will be allocated so that INDECOPI may continue to carry out its work.

Assessment

Since the 2003 IAP Report, Peru has continued to work toward alignment with international standards, to increase its participation in regional and international standardizing bodies and to promote the importance of adopting and adhering to standards among Peruvian stakeholders.

VI. Customs Procedures

APEC Objective

APEC economies will facilitate trade in the Asia-Pacific region by:

- a. simplifying and harmonizing customs procedures;*
- b. encouraging the use of technologies and e-commerce as productivity tools in keeping with developments of the new economy; and*
- c. enhancing cross-border co-operation in the movement of goods and services to counter terrorism.*

Peru's Approach

Peru's approach to customs procedures is to facilitate foreign trade through Peru's ports and border crossing points to contribute to national development while taking into account Peruvian fiscal interests.

The Peruvian Customs Service is part of the National Superintendence of Tax Administration (SUNAT), which is in charge of the administration, collection, control and enforcement of international traffic of goods, means of transport and people within Peru's Customs Territory.

Peru has taken a number of steps to liberalize its customs procedures since 2003, including: adoption of measures pursuant to the Special Customs Destinations of Postal Service and International Courier Service Rules (Supreme Decree No. 067-2006-EF) to facilitate postal shipment clearance; adoption of guidelines and regulations to align Peruvian practice with the WTO Valuation Agreement; and the first steps in implementing paperless trading and an improved risk management approach to customs clearance.

Peru is currently undertaking a number of projects to facilitate the movement of goods through Peruvian Customs, including:

- (i) Development of a paperless trading system that will result in a single window approach to customs;
- (ii) Development of a price optimization database to reduce verification processing time and to value goods in accordance with the WTO Valuation Agreement (Peru adopted the WTO Valuation Agreement in 2000);
- (iii) Development of a risk management system (Control System of Customs Risk Management) based on a statistical model that selects low-risk and high-risk shipments;
- (iv) Development of express consignment procedures, including identification of low-risk frequent users, to simplify customs clearance procedures; and
- (v) Improving the methods for identifying and stopping trade in illegal goods (counterfeit products and goods imported or exported in violation of international agreements such as CITES or the UNESCO agreement on cultural heritage) through cooperation with INDECOPI.

Peru adopted the Harmonized Tariff System 2007 on April 1, 2007 under Supreme Decree No 017-2007-EF.

Peruvian Customs Rulings may be appealed by aggrieved parties. The first appeal is to the National Superintendency Fiscal Tribunal. If the appeal is not resolved at this level, it is possible to appeal a finding or decision of the Fiscal Tribunal to the Supreme Court.

Peru's Customs System is transparent. The SUNAT website includes a "user's orientation" section to assist users understand the customs system as well as an e-mail consultation system that allows users to direct questions directly to Peruvian customs officials. Tariff classification rulings that have a binding effect are published on the SUNAT website.

To support the development of an effective customs system, SUNAT has entered into agreements with a number of government agencies, including MINSA (Ministry of Health), MTC (Ministry of Transport and Communications), SENASA (Agricultural Health National Service), PRODUCE (Ministry of Production), MININTER (Ministry of Interior) and UKF

(Financial Intelligence Unit) to allow an information exchange among these bodies and to simplify and to make effect clearance of goods.

Peru has no plans to become a member of the Kyoto Convention, but officials consider that most of the Convention's requirements are reflected in Peruvian legislation and in steps being taken to simplify and harmonize Peruvian customs procedures. Officials noted that a decision to join Kyoto is complicated by the fact that the Convention would become a self-executing treaty in Peru and form part of Peru's domestic law. The Convention would have to be submitted to Congress and considered as legislation.

The 2003 Expert's Report noted that Peru does not participate in an MRA with APEC members, mainly due to limited resources under Central Government fiscal-austerity measures. Nor has Peru joined the APEC Information Technology Agreement, under the Suppliers Declaration of Conformity. Peruvian officials confirmed that they continue to face resource limitations that restrict their ability to participate fully in some agreements. Therefore, within the SCSC, Peru envisages its participation in MRAs on specific regulated sectors.

Assessment

Peru's approach to customs procedures has been to attempt to balance the requirements of security through the control of the movement of goods against the need to facilitate trade. Peru has made progress toward this goal since 2003 and is implementing a number of programs that should simplify customs procedures to facilitate the free flow of commerce while identifying higher risk shipments and exporters for closer scrutiny. So long as Peruvian officials have the resources to pursue these, and other initiatives, there is no reason to believe that they will not achieve their Bogor goals by 2020.

VII. Intellectual Property Rights

APEC objectives

APEC economies will:

- a. *in conformance with the principles of the TRIPS Agreement:*
 - *ensure adequate and effective protection, including legislation, administration and enforcement of intellectual property rights,*
 - *foster harmonization of intellectual property rights systems in the APEC region, promote transparency strengthen public awareness activities,*
 - *strengthen public awareness activities, and*
 - *promote dialogue on emerging intellectual property policy issues, with a view to further improve intellectual property rights protection and use of the intellectual property rights systems for the social and economic benefit of members.*

- b. *address the challenges for intellectual property rights arising from the rapid growth and developments of the New Economy by:*
 - *establishing legal frameworks to promote creative endeavor and encourage on-line activity;*
 - *ensuring a balance between the different rights and interests of copyright owners, users and distributors;*
 - *establishing an appropriate balance among all stakeholders, including content providers and ISPs in terms of the liabilities for infringing intellectual property on-line; and*
 - *providing incentives for innovation without sacrificing the community's interest in reasonable access to information.*

Peru's Approach to Intellectual Property Rights

Peru has been working to protect intellectual property rights through a combination of international, regional and national legislation. The Peruvian legal framework for the protection of intellectual property is established by domestic legislation, the Andean Community's Cartagena Agreement, the Treaty establishing the Court of Justice of the Andean Community, and Andean Community Decisions. The National Institute of the Defense of Competition and Protection of Intellectual Property (INDECOPI) is the government agency responsible for the administration and enforcement of intellectual property legislation. INDECOPI's functions are regulated by Decree Law No. 25868, Supreme Decree No. 025-93-ITINCI and Legislative Decree No. 807.

National Legislation

Peru enacted two principal laws addressing intellectual property rights: the Industrial Property Law and the Copyright Law. Both laws were enacted in 1996, but have now been merged into a single domestic regulation with many international provisions, including WTO TRIPs Agreement obligations. Therefore, in general terms, Peruvian IPR protection is in accordance with international norms.

In the past four years, Peru has made great progress in protecting traditional knowledge through the Law for the Protection of Traditional Knowledge (Law 27811) published in May 2004. The purpose of the legislation is to allow indigenous peoples to safeguard their traditional knowledge and to benefit from ownership of these intellectual property rights. Since the beginning of 2006, INDECOPI has taken steps to implement Law 27811, including raising awareness of the ability to protect traditional knowledge among indigenous peoples and training facilitators who will advise indigenous groups on the rules permitting the protection of traditional knowledge. Several communities were visited, and more than 600 people were trained on traditional knowledge issues. Meanwhile, promotional materials, including comics, audio material for radio broadcasting and guidelines for protecting traditional knowledge, have been produced and distributed among stakeholders. As a first result, two traditional knowledge registries were presented by indigenous peoples to the Office of Inventions and New Technologies in September 2006.

In May 2004, Peru created the National Commission for Access Protection to Peruvian Biological Diversity and Traditional Knowledge of Indigenous Peoples, whose main purpose is to fight against bio-piracy of Peruvian biological products and traditional knowledge of indigenous peoples. Since its creation, this Commission has identified a number of cases of bio-piracy related to a variety of Peruvian products (e.g. greentech in France with sachu inchi, maca, uña de gato and pasuchaca in Japan, maca in Korea).

Peru has permitted the protection of geographical indications, including the “appellations of origin” and “indications of source”. Peru has obtained recognition for the following appellations of national origin: Pisco, White Maize (*Gigante Cusco* variety), Chulucanas pottery products and Pallar from Ica. A multi-sector commission elaborated the legal framework related to geographical indications for the well-known Peruvian alcoholic beverage “Pisco”.

Additionally, the Peruvian Congress has enacted the Law of Performers and the Law of Book and Promotion of Reading, which includes sections on intellectual property rights. It is remarkable the private copy levy included in the Law of Artist is being collected from producers and importers of optical disks. There is also a Law of Strengthening of Fight against piracy that will be commented later.

Regional Initiatives

Andean Decisions 351 (copyrights and related rights) and 486 (industrial property) were enacted in 1993 and 2000 respectively. Both Decisions incorporate substantive intellectual property law and enforcement obligations included in the TRIPs Agreement. Members of the Andean Community began to work on common guidelines for border measures in August 2005, in coordination with WIPO and the General Secretary of the Andean Community. The next step is to implement of these guidelines.

The United States - Peru Trade Promotion Agreement (PTPA) was signed on April 12, 2006. The Agreement includes a Chapter on intellectual property rights, which is expected to result in a number of significant improvements in Peru’s protection of intellectual property rights including: protection of trademarks used in Internet domain names; strengthened measures to prevent the circumvention of technological devices for preventing Internet-based copyright piracy; protection of test data and trade secrets for pharmaceutical and agricultural chemical products; and provision of deterrent penalties against piracy and counterfeiting.

International Agreements

Peru is a signatory to the main treaties on intellectual property, such as TRIPs, Paris Convention, Bern Convention, Rome Convention, Geneva Convention for the Protection of Producers of Phonograms, Brussels Convention relating to the Distribution of Program-carrying Signals transmitted by Satellite, International Registry of Audiovisual Works and the Washington Agreement. Moreover, Peru has adhered to the WIPO Copyright Treaty (WCT), and to the WIPO Performances and Phonograms Treaty (WPPT). Since May 2005, Peru is signatory of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The review of Peruvian intellectual property legislation before the WTO Council for Trade-Related Aspects of Intellectual Property Rights was held in 2001. Peru replied to questions put to it³⁶, relating to the issue of enforcement, in particular. Peru demonstrated successfully that IPR protection in the country is in accordance with the TRIPs Agreement.

Peru also hosted a series of international conferences, seminars or workshops to discuss some key issues regarding IP rights protection. Among others, main activities are as follows:

- Geographical Indications Seminars (organized by WIPO, INAO and INDECOPI, in Lima and Cusco, February and March 2006);
- International Congress about the Challenge of Copyright (organized by INDECOPI and APDAYC, in Lima, April 2006);
- Seminar on the Patent Cooperation Treaty (organized by WIPO, OEPM and INDECOPI, in Lima, September 2006);
- Advanced Course on Intellectual Property in the Global Economy (organized by WIPO, SPRO and CIDA, in Lima, September 2006);
- Workshop on Interchange Experiences about Implementation of Dispositions on Intellectual Property in Commercial Agreements (organized by Foreign Trade and Tourism Ministry, in Lima, November 2006).

³⁶ WTO documents IP/Q/PER/1, IP/Q2/PER/1, IP/Q3/PER/1, IP/Q4/PER/1 of 12 June 2001.

- National Seminar on Appellations of Origin (organized by WIPO, Ministry of Foreign Affairs of Peru and INDECOPI), in Lima, October 2007.

Ensuring the Expeditious Granting of Intellectual Property Rights

Peru has made improvements to ensure the expeditious granting of intellectual property rights. In July 2003, the Intellectual Property Offices (Trademarks, Patents and Copyrights) obtained certification on ISO 9001: 2000. Currently, the registry process at the Copyrights Office lasts only one day, which is a significant improvement, and time periods involved in granting main intellectual property rights have also been shortened.

The Trademarks Office within the Systems Area of INDECOPI is designing a virtual registry project related to trademarks application and procedure on line. A further project related to virtual presentation and processing patent applications started in 2007. The Copyright Office and Systems Area have prepared and it is ready to be launched a virtual registry of copyright.

More Effective Enforcement of Intellectual Property Rights and Fighting Piracy

INDECOPI, the government agency responsible for administration of intellectual property legislation, is endeavoring to develop a culture of respect and enforcement of intellectual property rights by launching several activities to combat piracy. In November 2006, four supra regional courts with expertise in intellectual property rights were created. Along with the National Penal Chamber of the Superior Court, the four regional courts are responsible for criminal intellectual property right infringement cases. In June 2004, Peru issued intellectual property legislation (Law 28289) to strengthen intellectual property criminal sanctions. This law particularly creates a specific registry for optical disks import and other raw material in customs procedures.

INDECOPI's Copyrights Office is a key participant of the Central Command of the Commission to Fight against Smuggling and Piracy. In 2006, the Copyrights Office conducted 287 inspections and 232 infringement cases concluded. In the same year, INDECOPI's Trademarks

Office opened 477 infringement cases and conducted 423 inspections. The Trademarks Office also found that 224 charges were well-founded and issued 174 fines (totaling almost \$500,000, the highest total ever) and 44 cautions.

The Copyright Office regularly inspects sale and distribution stands where books, video/audio products and toys are sold without authorization from the copyright holder. In this program, the Copyright Office has four action levels, including: informal distribution of illegal goods in different Peruvian cities; store distribution; high concentration places of distribution; and reproduction and distribution sources, where illegal and counterfeited goods are produced. All public competent authorities and private sectors affected by these activities participated in this program.

Penalties for Infractions

In 2004, the Congress of Peru approved amendments to the Penal Code to tighten enforcement of intellectual property rights by increasing penalties for infringement. The penalties for infractions related to infractions of intellectual property rights are now as follows:

- Copyrights, imprisonment from 2 to 6 years, and in aggravated cases, from 4 to 8 years;
- Patents, imprisonment from 2 to 5 years;
- Trademarks, imprisonment from 2 to 5 years.

An increase in the penalties for infringement of intellectual property rights is expected to have a more deterrent effect, since it implies effective time in prison for people infringing the intellectual property laws. In addition, modification of the Penal Code also includes two other relevant aspects, including: a more specific and enlarged list of infraction modalities for the three intellectual property areas, and recognizes that aggravating circumstances exists in cases where a public official commits the offence in an organized way.

In July 2005, the intellectual property legislation (Law 28571) for administrative sanctions for infraction of intellectual property rights was modified to increase the maximum fine for

administrative offences from 150 U.I.T. (tax units) to 180 U.I.T. (1 U.I.T. is approximately USD \$1,150).

Building Public Sector – Private Sector Partnership

INDECOPI has led public enforcement initiatives, bringing together private sectors in the fight against piracy. A multi-sector Commission has also been established to prevent and combat smuggling, informal business and the adulteration of pharmaceutical products. In other sector levels, since 2002, the Anti-piracy Crusade, led by the Copyright Office, has the support of public and private sectors to restrain offences or infringement acts against copyright in the audiovisual industry. The movie industry and video rentals and distributors are fighting against piracy through projection of anti-piracy messages in movie theatres and on videos.

The Contracopia Association was organized in 2001 with the support of INDECOPI and active participation of 12 business associations and 8 public institutions. The Contracopia aims to strengthen enforcement of the law to fight piracy through education, coordination and inspection.

Furthermore, a chromatography laboratory has been operating since February 2002 at the Metrology National Service (at INDECOPI). This laboratory makes an adequate quality verification of Peruvian geographical indication “Pisco”, while the Trademarks Office is carrying out important preventive and enforcement measures to ensure the geographical indication “Pisco” is used appropriately.

Public Awareness Events and Educational Programs

Peru has launched a series of public educational programs to promote awareness of intellectual property rights and to enhance intellectual property user skills. Several promotional materials were widely distributed among intellectual property stakeholders, including comics, audio material for radio broadcasting and guidelines for protecting traditional knowledge.

The Anti-piracy Crusade has created the “Movie Day” which takes place in November of each year. Nowadays anyone is able to watch films in all movie theatres in Peru by paying a symbolic price. The Copyright Office has also launched other awareness events such as the “National Music Day”, “Intellectual Property Week”, “Copyright Day” and “National Day of Pisco and Pisco Sour”.

“Indecopi Educa” is a program addressed to school teachers and has had a very positive effect on children and their parents. “Indecopi Empresa” is a training program focused on small and medium enterprises to enhance their competitiveness, in a fair and honest competition framework and intellectual property respect. This program has finished the first phase of enterprise awareness and is now implementing the second phase. “Cruzada de la Calidad” (Quality Crusade) is a campaign starting from 2002 to improve quality and competitiveness to benefit consumers and small and medium enterprises.

Intellectual Property Training Programs

After specialized courts were appointed in November 2006, INDECOPI initiated capacity building and training programs by organizing courses for court staff. It is expected that results will be obtained after the cases which are under the jurisdiction of those new courts are resolved. Additionally, officials of the Intellectual Property Tribunal and Trademark, Copyright and Patent Offices provide training on intellectual property rights to judges, public prosecutors and national police on a regular basis.

To get receive ISO 9001: 2000 certification, INDECOPI has begun training its employees and internal auditors about the new requirements, identification, design and implementation of the requirements, internal audits to evaluate the adequate implementation of the requirements, and preparation of the documents for evaluation by the Certification Organization.

INDECOPI has also been very active in enhancing intellectual property user skills, including a technological innovation contest which required all participants to use raw materials that originate in Andean regions, and a National Invention Contest to promote the innovation. In

cooperation with WIPO, it implemented the project of identifying potential patent applications of SMEs and other beneficiaries in Peru.

Participation in APEC Activities

INDECOPI participated in:

- the Seminar on Patent Protection and Drugs Access, held in Beijing, China, from 22 to 23 April 2004;
- the APEC Training Course on IPR Enforcement for Developing APEC Member Economies, held in Hanoi, Vietnam, from 11 to 14 May 2004;
- the APEC Workshop on IP for SMEs and Micro Enterprises, held in Hanoi, Vietnam, from 23 to 24 February 2006.

INDECOPI is also seeking to cooperate with other APEC Economy Members to automate the Intellectual Property System related to registering, processing, searching, storing, publishing and disseminating of applications and documents. A further project related to the Implementation of a Patent Based Technology Information Platform, including digitalisation of Peruvian patent documents, has been submitted to the Korean Fund administered by the Inter-American Development Bank (IADB).

Peru states in its IAP that it is seeking further cooperation in the following topics: traditional knowledge/genetic resources; geographical indications; and protection on folklore expressions.

Assessment

Peru has taken concrete and pragmatic steps to achieve more adequate and effective intellectual property protection in legislation, administration and enforcement. It has revised almost all of its intellectual property laws in conformity with principles of international agreements, and has made progress in the legislation relating to traditional knowledge and geographical indication. In

addition, the government public awareness activities and training programs have been very efficient and productive.

Despite intensive actions to combat infringement, Peru continues to confront difficulties and challenges relating to intellectual property protection. Infringement of intellectual property rights remains a great concern of foreign producers. According to the International Intellectual Property Alliance (IIPA), the level of copyright piracy still remained high in 2006, in particular for sound recording and musical compositions (98%), business software (70% after a reduction of three points from 73% the previous year) and motion pictures (63% after a reduction of twelve points from 75% the previous year). Optical disc piracy is on the rise and street piracy remains uncontained. Illegal photocopying on university campuses continues. The U.S. pharmaceutical and agrochemical industries continue to have concerns about Peru's protection of confidential test data submitted in connection with marketing approval procedures.

Peru remains on the Special 301 Watch List of the United States. Other APEC Member Economies have also urged Peru to take more effective enforcement actions to protect intellectual property rights. Specifically, additional legislation is needed to clarify the rights of artists and producers. Peruvian custom authorities also need to strengthen border controls. More police and administrative investigations are needed, prosecutors must actively pursue piracy cases, and judges should impose the deterrent-level sentences afforded in the criminal code. Public awareness of the importance of intellectual property right protection should be further increased. It is also suggested that the Government of Peru tighten its implementation of the Trademark Act and Anti-monopoly Act.

VIII. Competition Policy

APEC Objective

APEC economies will enhance the competitive environment to increase consumer welfare in the Asia-Pacific region, taking into account the benefits and challenges of globalization, developments in the New Economy and the need to bridge the digital divide through better access by ICT, by:

- a. introducing or maintaining effective and adequate competition policy and/or laws and associated enforcement policies;*
- b. promoting co-operation among APEC economies, thereby maximizing, inter-alia, the efficient operation of markets, competition among producers and traders, and consumer benefits; and*
- c. improving the ability of competition authorities, through enhanced capacity building and technical assistance, to better understand the impact of globalization and the New Economy.*

Peru's approach to competition policy

Peru has undertaken major changes to establish a market economy system by safeguarding free competition. Peru's approach to competition policy is to guarantee the effectiveness of the economic system by a mediator without intervening in or distorting the marketplace. The reforms are intended to ensure that the basic rules of competition are honored.

Legal framework

Peru's general framework for competition policy is composed of Legislative Decree 701, Legislative Decree 807, INDECOPI's competence and proceedings Law, Law 27444, General Administrative Procedure Law, Law 26876, Anti-trust and Anti-oligopoly Law for the Electricity Sector and Decision 608 of the Andean Community.

Legislative Decree 701 aims to eliminate monopolistic practices, controls, and restraints on free competition in the production and marketing of goods and the provision of services, so that free private enterprise can flourish for the greatest benefit of users and consumers.

According to the provisions of this law, economic activities that constitute abuse of a dominant market position or that limit, restrain, or distort free competition in a manner that injures the common economic interest are prohibited and violators may be penalized. Acts of abuse of “a dominant position” include:

- Unjustified refusal to satisfy demand for purchase or acquisition of goods or services, or offer of sale or provision thereof.
- Application in business practices of discriminatory terms for similar services, which place some competitors at a disadvantage with regard to others.
- Making contracts contingent upon acceptance of supplementary payments that by their nature and in comparison with business custom are not related to the purpose of the contracts,
- Other cases of a similar nature.

In June 2004, the Defense of Competition Chamber of INDECOPI issued Resolution 225-2004/TDC, which stated that abuse of dominant position comprises not only exclusionary, but also exploitative conduct.

When these anti-competitive acts are determined to exert actual or potential injury to the market, INDECOPI will impose administrative penalties, either fines or mandatory corrective measures, on persons or firms. The Courts may impose criminal penalties.

Regional arrangements

Decision 608 of the Andean Community, which was issued in March 2005, seeks to protect and promote free competition in the Andean Community. This decision replaced Decision 285, which was issued in March 1991. Andean Community members agreed to prepare regulations for Decision 608 to allow its application in proceedings initiated before the Andean Community.

Peruvian Government has concluded a free trade agreement (FTA) with the United States, Chile and Singapore, which include a competition policy chapter. Additionally, Peru has included a similar chapter under the negotiations of an FTA with Canada

Mergers & Acquisitions

Regulatory control over merger and acquisitions applies only to the electricity sector. Law N°26876 (Antitrust and Anti-oligopoly of the Electricity Sector) provides that INDECOPI is in charge of supervising mergers in the electricity sector. The Free Competition Commission (CLC) must be notified of potential mergers and acquisitions. Following analysis and investigation, the CLC will authorize the merger or acquisition.

Supreme Decree N° 087-2002-EF, published on June 2002, provides additional regulations for Law N° 26876. This decree establishes a special procedure for the application of the law whenever a concentration takes place as a result of the promotion of investment by the Agency for the Promotion of Investment, PROINVERSION.

The electricity sector is also subject to a prior notification mechanism for concentration operations. All companies directly or indirectly involved in mergers must give prior notification of the merger to the CLC setting out their market share in the electric power generation, transmission and distribution sector in Peru. The CLC has developed a new questionnaire that improves the request for more direct and specific information within a merger notification procedure, taking into account the Peruvian way of operation in electricity sector.

Although there is no explicit merger control policy in the telecommunication sector, the current legal framework establishes that any transfer of licenses and concessions among telecommunication operators should be evaluated in terms of its competitive effects on the industry. Depending on the results of this evaluation, a transfer could be approved, conditioned or potentially denied. Currently, the Technical Secretary has already analyzed two cases, and final guidelines and relevant criteria on the operations of similar nature would be released by the end of 2007.

Supervisory body and regulations: INDECOPI

Since its establishment in 1992, INDECOPI has viewed itself as an institution with an arbitration or mediation role in competition disputes among individuals and private enterprises. INDECOPI is an administrative body within the Executive, reporting to the Presidency of the Council of Ministers.

INDECOPI has made broader use of its prosecutorial power, taking a more assertive approach and demonstrating an even more holistic understanding of the market phenomena. This new approach to competition is reflected in a series of initiatives undertaken to properly enforce the Antitrust Law by means of corrective actions, such as the revision of precedents set during the past decade.

The Free Competition Commission (CLC) is an autonomous agency and one of the jurisdictional bodies within INDECOPI. It is in charge of competition issues in all industries and sectors except telecommunications. CLC consists of six members who are directly named by INDECOPI's Board of Directors. Each member works part time at the Commission, and can be selected from the public or private sector. Their autonomy and impartiality is granted by their moral and professional capacity.

The Defense of Competition Chamber of INDECOPI's Tribunal has the second and final administrative jurisdiction on cases involving violations of Decree 701.

All different areas, commissions and offices of INDECOPI are financially and administratively audited every year. Regarding the issues related to the CLC's tasks, INDECOPI promoted an academic audit which seeks to review the conceptual framework used by its commissions to introduce modifications where required.

Supervisory body and regulations: OSIPTEL

OSIPTEL, the National Telecommunication Regulatory Agency, is the administrative body responsible for all matters related to the telecommunications sector, including the resolution of any conflict related to conduct affecting the market for public services in this sector. OSIPTEL has been working in a normative framework to promote competition in the telecommunication sector. For instance, through Resolution N° 004-2004-CD/OSIPTEL, OSIPTEL has issued a law related to the interchange of consumer's information among fix line and long distance telecommunication operators. OSIPTEL has also issued the "Public Infrastructure Sharing Law" to enhance policies regarding Bottleneck Infrastructure or Essential Facilities.

Additionally, OSIPTEL has had an important role in the enforcement and implementation of the Competition Legal Framework. In 2002, OSIPTEL issued guidelines (N° 075-2002-CD/OSIPTEL) regarding the evaluation of anticompetitive practices in these markets, in order to improve the legal system and the predictability of the authority procedures.

An *ad-hoc* Professional Body is responsible for enforcement of the competition law. Members of the Body are prominent academics and professionals in the telecommunication sector and in the competition and regulatory network infrastructure policies in Peru. The Professional Body is designated by the Board of Directors of OSIPTEL.

Cooperation with other APEC Member Economies

Peru participated in the APEC Training Course on Competition Policy for APEC Member Economies, which was held in August 2006, at Bangkok, Thailand.

In 2007, Peru will participate in the Friends of the Chair Group of the EC Committee, taking part in the Competition and Regulatory Reform groups.

Peru is now seeking cooperation arrangements with other APEC Member Economies to promote technical collaboration and capacity building for officials of competition agencies. This activity will help the competition authority in investigations of competition-related proceedings.

Cooperation with other International Fora

Peru is part of the Iberoamerican Competition Forum, which promotes co-operation on competition issues among Iberoamerican countries. Peru is also a member of the International Competition Network (ICN) and participates in many of its most important subgroups. Peru participated in a project carried out by the European Union and the Andean Community General Secretariat on Competition issues (2003-2005). Peru also benefits from the COMPAL Programme, which is a three-year Technical Assistance Programme on Competition and Consumer Protection Policies for Latin America supported by SECO (Switzerland). Finally, the 2003 and 2004 events organized by the OECD featured a peer review of Peru's competition institutions.

Peru has also been an active participant in international conferences and workshops organized by various organizations, such as the UNCTAD, OECD, EU, Andean Community and CIDA (Canadian International Development Agency).

Assessment

Peru continues to make a significant contribution to the administration and consistent integration of policy issues relating to the defense of market competition, intellectual property and technical regulations. In particular, the Peruvian legal framework for competition policy remains transparent and effective, and enforcement mechanism has been improved adequately. However, there still seems to be room for public awareness activities to foster competition culture in the Peruvian market economy, focusing on the promotion and dissemination of benefits of competition policies.

INDECOPI's autonomy and neutrality should also be strengthened. It is notable that between 2005 and 2007, 95% of INDECOPI's budget was derived from fees and fines, while about only 5 percent of its funds came from the public budget. As a result, a central concern of INDECOPI has been to cover its own costs rather than oversee market competition.

IX. Government Procurement

APEC Objective

APEC economies will

- a. develop a common understanding on government procurement policies and systems, as well as on each APEC economy's government procurement practices;*
- b. achieve liberalization of government procurement markets throughout the Asia-Pacific region in accordance with the principles and objectives of the Bogor Declaration, contributing in the process to the evolution of work on government procurement in other multilateral fora;*
- c. increase the use of electronic means to conduct government procurement and in so doing seek to promote the uptake of e-commerce more broadly; and*
- d. implement and maintain standards consistent with the APEC Leaders' Transparency Standards.*

Peru's Approach to Government Procurement

Through amendments to the Procurement Law made in 2004, Peru has introduced the use of new tender modalities for government procurement, such as reverse auction, purchases by catalogue and corporative purchase. The goal of these reforms is to realize savings to public administration, to achieve greater efficiency in the procurement system and to reduce time limits related to tendering procedure. Peru has also started to use electronic means for procurement transactions under the modality of reverse auctions and for minor purchases. Meanwhile, many measures were introduced on domestic review mechanisms in order to get a more effective and timely review procedures for suppliers according to the principle of due process.

Legal framework

In 2004, Law N° 28267 modified the Government Procurement Act (Law N° 26850). The revised law addressed fair dealing, accountability and predictability, making the processes for dispute settlement, resolution and contract termination transparent and to introduce warranties related to the contract. The main modifications and improvements are as follows:

- The National Register of Suppliers was created, in contrast to the previous Register, which was only for suppliers of public works.
- SEACE was designated as the mandatory instrument for the state contracting.
- Implementation of new mechanisms to evaluate contractors such as reverse auctions, price registration covenants, and corporative acquisitions.
- Simplification of government procurement procedures.
- Restrictions on the use of limited tendering procedures (direct purchases).

There are no restrictions on access to government procurement by foreign suppliers. The tendering procedures do not differentiate between foreign and domestic suppliers except for a 20% bonus for goods and services produced in Peru that is applied in the technical and economic valuation of the proposal.

Peru is not a signatory to the WTO Agreement on Government Procurement.

Peru concluded the Trade Promotion Agreement with the United States (PTPA) in April, 2006, which includes a Government Procurement Chapter. The Agreement covers the purchases by most Peruvian central government entities, including state owned enterprises, Peru's oil company, and its public health insurance agency. The PTPA is expected to provide for more fair, non-discriminatory, and transparent opportunities for U.S. companies to bid on contracts from Peruvian government procurement contracts. Particularly, it establishes that once the PTPA enters into force, Peru will not be able to apply preferences to procurement covered by the PTPA.

To improve the government procurement legal framework, Peru has decided to use the OECD management indicators to review Peruvian procurement law and practices.

Administrative and Regulatory Process

The Superior Government Procurement Council, CONSUCODE, is the autonomous institution that supervises the government procurement process, disseminates information, operates

educational programs, promotes revision and update of government procurement legislation and administers the Contracts and Acquisitions Tribunal. CONSUCODE is attached to the Prime Minister's Office

CONSUCODE is also responsible for considering complaints from users of the Government Procurement system concerning irregularities allegedly committed by Public Entities. Three new courtrooms at the CONSUCODE Procurement Tribunal have been created to make the review mechanism more efficient. This Tribunal constitutes the last administrative resort.

Peru has been endeavoring to design a more decentralized model of functions for CONSUCODE, allowing it to more efficiently supervise tendering procedures, resolve dispute settlements and attend complaints in every Region.

Enhancing Transparency in Government Procurement

In 2002, the Peruvian Congress approved Law N° 27806, Transparency and Access to Public Information Act, which established to disseminate the following information of government procurement:

- the goods and services acquired;
- the people responsible for these acquisitions; and
- the executed budgets.

The Prime Minister's Office (PCM) approved Supreme Ordinance N° 031-2002-PCM on May 2002, regarding the General Policies for the Development of the Government Procurement Electronic System. CONSUCODE became the principal office responsible for administration and operation of this Electronic System.

Peru works continuously to improve transparency in government procurement through amendments to procurement law and improvements in the information system. Since 2004, the Peruvian Government established that all public entities at all level of government, including

public enterprises, must use the Electronic Government Procurement System (SEACE), which created a centralized single entry point for all information concerning procurement opportunities³⁷. SEACE also has a business opportunities link that enables registered providers to become acquainted with the information related to their business branch. Furthermore, since 2005 all public entities are required to have their tendering information published in this electronic system. This database provides information on prices and conditions for public access to a tendering procedure, which can be used as a reference for future contracts. SEACE is efficient in enhancing transparency, reducing transaction costs and better accomplishing the value for money principle.

Through SEACE, all national and foreign suppliers have equal access to the detailed procurement opportunity information with the Peruvian Government. SEACE publishes notices of intended procurement and concurrently provides tender documentation in this electronic medium. CONSUCODE has also developed a free service for interested suppliers that facilitates their receipt of electronic notifications of procurement information.

Peru plans to translate the CONSUCODE, SEACE and National Register of Suppliers websites into English in the short or medium term. Peru intends to complete this project by seeking the financial cooperation, especially from abroad.

New tender modalities

In 2004, the Procurement Law established three categories of new tender modalities: centralized purchases, reverse auction and corporative purchases. These three new modalities have been completely implemented and are being used by public entities with respect to the goods and services that need to be procured.

Peru will conduct a study to identify the most advantageous procurement modality, taking into account the three new modalities incorporated in the law and the market performance. This work

³⁷ Since 2006, electronic transactions through SEACE have been taken place for procurements below US\$ 4,000.

will be pursued in cooperation with the World Bank and the Inter-American Development Bank (IADB).

Additionally, CONSUCODE is now working toward international standards to adapt the national catalogue of goods and services to the United Nation Classification System (UNCS).

Open competition mechanism

In 2005, Peru established the National Register of Suppliers, which serves as the official data base of goods and services suppliers. The register is intended to simplify the requirements and conditions for participation in tendering procedures by presenting them just once. Registration can be made electronically, except for works. The Register will be for electronic procurement transactions in the near future, as well as for the catalogue of goods and services and the catalogue of public entities. The only requirement for participating in a tendering procedure is to be registered in the National Register of Suppliers. The system will also save resources for potential suppliers.

Capacity building and training programs

A citizen vigilance system, which was developed through a USAID project, has been implemented in eight Regions of the country by CONSUCODE. The system offers training to citizens concerning the application of law and procedures on government procurement. The system also supervises compliance with procurement laws by public officials.

In collaboration with the World Bank and the Inter-American Development Bank, Peru is working to assist public officers to more efficiently determine the referential value of the goods or services subject to a tendering process.

Peru will also take measures to consolidate and supervise public officers responsible for public procurement processes, including establishing a National School for officers, preparing the implementation of an evaluation system to measure the performance of public officers, and

launching an incentive program to encourage officers to make great savings in the administration of government procurement.

Assessment

Peru is committed to pursuing efforts to develop an open and non-discriminatory Government Procurement regime. Peru has taken a number of significant steps in its government procurement regulatory system and administrative procedures.

It is notable that, thanks to the Government Procurement Electronic System and the National Register of Suppliers, any potential supplier now can have access to information concerning Government Procurement at any time, anywhere and without any cost. The use of electronic means to publicize tendering and other relevant information has generated great savings to the government. During 2006, Peru's government estimates that these amendments resulted in more than USD \$20 million in cost savings.

The new initiatives have also resulted in a remarkable increase in the number of participants in government procurement. In 2003, 30,000 suppliers participated in tendering procedures. In 2006, 70,000 potential suppliers participated in tendering procedures. There has also been an increase in the number of foreign suppliers who participate in Peru's tendering procedures: 487 foreign suppliers participated in 2007 compared with 315 last year.

New tender modalities, especially reverse auction and framework agreements, have also generated savings to the government. Time limits of those tendering procedures have become shorter and more useful for public entities.

However, some APEC Member Economies contend that the current 20% bonus granted to locally produced goods and services is excessive and accords unfair treatments to foreign suppliers. This kind of "buy local" policy needs to be reduced or eliminated.

Finally, Peru is also encouraged to continue improving beyond three items in the APEC Non-binding Principles on Government Procurement, namely, Transparency, Value for Money, and Accountability and Due Process, by sharing experiences with other APEC Member Economies.

X. Deregulation/Regulatory Review

APEC Objective

APEC economies will facilitate free and open trade and investment in the Asia-Pacific Region by, inter alia:

- a. enhancing the transparency of regulatory regimes (including through the use of new technologies);*
- b. eliminating domestic regulations that may distort or restrict trade, investment or competition and are not necessary to achieve a legitimate objective; and*
- c. speeding up reforms which encourage efficient and well functioning product, labour and capital markets and supportive of institutional framework.*

Peru's Approach

Peru's approach is deregulation and regulatory review is to review existing and proposed regulations with an eye to reducing or eliminating any trade restrictive effects and to continue to deregulate through privatization programs and concessions.

Peru reviews existing and proposed regulations through *ex ante* and *ex post* review mechanisms to eliminate or amend domestic regulations that distort or restrict trade, investment and competition. These processes are part of Peru's overall movement toward a freer and more competitive economy. These mechanisms are intended to support the development of a more competitive economy that can more effectively compete on the world stage. These mechanisms are also intended to speed up the rate of reform and to increase transparency as it relates to Peruvian regulatory measures.

The Government of Peru is committed to continue with the deregulation process, through privatization programs and concessions granted in infrastructure and public utilities projects in several economic sectors. In recent years, the Peruvian Government has used a new kind of concession contract, public-private partnership agreements.

Regulatory objectives and rationales

The regulatory framework for each economic activity (telecommunications, electricity, and mining, among others) seeks to encourage free and fair market competition, promote sector development and protect consumer rights.

The State regulatory functions are underpinned by the following:

- A professional and technical approach to decision making;
- Promotion of investment and free competition;
- Encouraging a culture based on citizens' right to claim;
- Defense of regulatory stability; and
- A sense of fairness.

Regulatory framework

INDECOPI's Technical and Commercial Regulations Commission (CRT) and Market Access Commission (CAM) are quasi-jurisdictional bodies responsible for investigating and determining cases related to trade barriers and market access. CRT is a functional body responsible for enforcing regulations and supervising all non-tariff measures established. CAM is responsible for domestic bureaucratic barriers to entry imposed by public institutions. The roles of both Commissions are complementary.

The criteria used when determining whether regulations achieve legitimate objectives in the case of the CRT and the CAM are as follows:

- **Rationality.** CRT and CAM evaluate whether the aim, purpose or requirement introduced by a regulation is consistent with principles of logic, is proportional with the pursued objectives and do not prevent the proper functioning of a competitive market.
- **Legality.** In the case of non-tariff measures, the CRT evaluates the legal status of the regulation, and whether it satisfies the legal requirements. In the case of the CAM,

the evaluation also includes an analysis of the matter subject to jurisdiction.

- Legitimate objectives. In the case of non-tariff measures the CRT evaluation also considers the impact of regulation on health, safety and environment.

A number of other regulatory agencies have also been created or restructured to oversee designated areas, including: INDECOPI and OSIPTEL (telecommunications sector), SUNASS (water and sewage), CONAM (environmental protection), OSINERG (energy and electricity), OSITRAN (transportation), CONASEV (capital market) and PROINVERSION (investment and privatization).

“Ex-ante” quality control mechanism

The *ex ante* review mechanism was introduced in 2005 and is applied by some Ministries as a quality control mechanism of new regulation that focuses on the actual impact of the regulation in practice. The *ex ante* review mechanism is also applied to review the stock of existing regulatory measures and, thus, its application is not restricted to review of newly adopted regulatory measures. Peruvian officials advised that they intend to complete the implementation of the regulatory review mechanism by 2009 and a review of regulatory measures on a sector-by-sector basis by 2012.

In 2006, the Ministry of Economy and Finance and Ministry of Health implemented regulatory quality control mechanisms, which include transparency and economic and legal evaluation before promulgation of regulations. In the case of the Ministry of Health, the mechanism reviews all technical sanitary regulations proposed by all its related agencies. The Ministry of Economy and Finance reviews all regulations related to competition, trade and investment measures, and all technical regulations before their approval. With this mechanism, the legal norms that contain non-tariff barriers have been reduced to very low levels in Peru.

“Ex-post” regulatory review mechanism

The “ex-post” review mechanism has been implemented by INDECOPI, specifically its Technical and Commercial Regulations Commission (CRT) and Market Access Commission (CAM). The purpose of this mechanism is to review regulations before they are introduced. The CRT reviews all non-tariff measures. The CAM reviews all bureaucratic barriers to entry imposed by policy administrators.

In 2006, the Ministry of Economy and Finance conducted a short-term program to review all technical regulations related to non-tariff and technical barriers to trade. With the application program, all agencies have started a modification program in their regulations. This kind of program will be conducted every 5 years.

CAM has been reviewing compliance with the General Administrative Procedures Law, particularly its provision referred to the mandatory approval and maintenance of a Uniform Administrative Procedures Restatement by all branches of the Peruvian Government (including regional and local authorities). Since July 2003, CAM’s enforcement faculties have been improved, which achieves an efficient result.

In April 2007, Law 28996 extended CAM’s authority to cover measures adopted at the municipal or regional level.

Bureaucratic Barriers

The Market Access Commission of INDECOPI publishes an annual Index of Bureaucratic Barriers, which lists measures maintained by municipal governments that are perceived to restrict trade and investment. The Index also identifies the municipal governments that maintain the most restrictive regulatory barriers. Peruvian officials advised the Study Group during the Lima meetings that publication of the Index has led to a reduction in the overall number of regulatory barriers maintained by municipalities as the municipalities attempt to avoid being listed as among the worst offenders.

Industry or sector specific deregulation

Since 1990s, deregulation and privatization have been pursued in Peru, mainly covering airports, ports, national road services, irrigation projects and transport and gas distribution.

In June 2006, the Peruvian Government granted a 30-year concession for the design, construction, financing, operation and maintenance of the new containers terminal located by the South Breakwater at the Callao Port.

Enhancing transparency of regulatory reforms

In March 2001, Peru enacted regulations to Law N°27322, which is related to the framework of Public Services Regulatory Agencies. The Administration also promulgated Supreme Decree N° 042-2005-PCM. Both regulations include transparency measures that should be adopted by agencies, such as:

- Pre-publication of projects, laws and decisions to be adopted;
- Publication of the annual budget and strategic and operative objectives;
- Consultation mechanism.

The Peruvian Government has also enacted the following new laws in order to consolidate the transparency principles of government actions since 2003:

- In 2003, Supreme Decree N° 072-2003-PCM, which defines the procedures to access information related with public finance and other issues;
- August 2004, Law 28335, which created the Index of Bureaucratic Barriers to market access at the municipal level (this is a tool used to promote better decisions and provide effective tools for local governments to determine their impact on a well-functioning market);

- In 2005, Supreme Decree N° 042-2005-PCM which required transparency (access to information and consultations) in the design of economic regulations on monopolistic sectors like telecommunications, electricity, water, and public infrastructure
- In 2005, Supreme Decree N° 149-2005-EF enacted by the Ministry of Economy to encourage all agencies to apply transparency mechanisms (consultation, pre-publication and publication) for all technical regulations (standards and conformity rules) in accordance with WTO TBT agreement;
- The Ministry of Health issued the Ministerial Resolution N° 826-2005-MINSA, which required pre-publication and consultation on all health-related technical regulations; and
- In 2006, the Ministry of Economy and Finance enacted Ministerial Resolution N° 639-2006-EF, which establishes the consultation and pre publication system for all regulations concerning the functions of Ministry, except for tax policy.

Private Challenges to Regulatory Measures

Individuals who believe that a regulatory measure raises an unnecessary, unjustifiable, or illegal bureaucratic barrier to the domestic market may challenge the measure before CAM.

Illegal bureaucratic measures are those imposed by Public Institutions in excess of their jurisdiction or measures that violate the legal framework that promotes private investment and simplification measures, or are measures that impose restrictions without following the procedures and/or legal formalities required.

Irrational bureaucratic barriers are measures imposed by Public Institutions that are not in the public interest or, if they are in the public interest, the purpose of the measure is exaggerated. Officials advised that bureaucratic barriers are generally challenged on the basis of rationality.

As an example, a municipal measure banning the use of TV antennas was successfully challenged on the basis that it was irrational, or if there are less restrictive options to protect public interest.

Assessment

The Peruvian Government has made significant strides since the 1990s in deregulating a number of its markets and sectors by means of enhancing regulatory transparency, by pursuing well-designed privatization programs, and by improving regulatory review mechanism and quality control mechanism. Many new administrative entities and technology have been introduced to achieve legitimate and rational objectives. Through the reforms introduced by Peru, there have been noticeable reductions in economic distortions and restrictions.

The Government of Peru should continue to pursue its efforts to reduce regulatory burdens and should adopt a more ambitious approach to introduce greater institutional reforms, particularly as they relate to labour and the capital market.

Compared with other sectors, Peru has not fully participated in APEC regulatory reform activities. Peru is encouraged to dedicate more resources to participation in Collective Action Plans and to draw on the experiences from of other APEC economies in deregulation/regulatory review.

XI. Implementation of WTO Obligations, including ROOs

APEC Objective

APEC economies will ensure full and effective implementation of Uruguay Round outcomes within the agreed time frame in a manner fully consistent with the letter and the spirit of the WTO Agreement.

On Rules of Origin, APEC economies will:

- a. ensure full compliance with internationally harmonized rules of origin to be adopted in relevant international fora; and*
- b. ensure that their respective rules of origin are prepared and applied in an impartial, transparent and neutral manner.*

Peru's Approach

Peru became a contracting party to the GATT in 1951 and was an original member of the WTO in 1994. Peru has implemented its WTO obligations and is committed to implementing new decisions and obligations as they arise.

The WTO agreements formed part of Peru's domestic law when Peru ratified the Marrakech Agreement by Legislative Resolution 26407. Consequently, WTO obligations may be invoked in cases heard before Peruvian courts.

Peru participates fully in the WTO and in its committees and is a full participant in the Doha Round negotiations. Peru is currently a member of the Cairns group and participates in the G-20 and G-33 negotiating groups. Peru also supports extending intellectual property protection to "indigenous knowledge", which officials define as knowledge concerning the beneficial properties and uses of plants and animals that are known to indigenous groups in Peru. See Section VII. Intellectual Property Rights

Peru has pursued an ambitious program of negotiating Free Trade Agreements and Regional Trade Agreements, which may be considered free trade areas for purposes of GATT 1994 Article XXIV.

Peru is not a member of any WTO plurilateral agreements.

Peruvian officials have indicated that officials will be trained to increase their knowledge of TRIPs and to enhance their ability to manage TRIPs-related dispute settlement. Peruvian officials also identified a requirement for physical infrastructure, equipment and software programs to implement the patent protection database.

With respect to Rules of Origin, Peru fully implemented the WTO Agreement on Rules of Origin on January 1, 1995. Rules of origin are based on a positive, neutral and transparent standard. Rules of origin are administered by the Ministry of Foreign Trade and Tourism and are applied in an impartial, transparent and neutral manner. Preferential and Non-Preferential Rules of Origin are published in official publications and have been notified to the WTO.

Assessment

Peru has fully implemented its WTO obligations. So long as Peru continues to meet its WTO notification requirements, no further steps are required to fully implement the Agreement or to adhere to its rules of origin obligations.

XII. Dispute Mediation

APEC Objectives

APEC economies will:

- a. encourage members to address disputes cooperatively at an early stage with a view to resolving their difference in a manner which will help avoid confrontation and escalation, without prejudice to rights and obligations under the WTO Agreement and other international agreements and without duplicating or detracting from WTO dispute settlement procedures*
- b. facilitate and encourage the use of procedures for timely and effective resolution of disputes between private entities and governments and disputes between private parties in the Asia-Pacific region; and*
- c. ensure increased transparency of government laws, regulations and administrative procedures with a view to reducing and avoiding disputes regarding trade and investment matters in order to promote a secure and predictable business environment.*

Peru's Approach

Peru participates in WTO dispute settlement and has an active arbitration system that serves both Peruvian nationals and foreigners.

Peru is a signatory to the ICSID (the Convention on the Settlement of Investment Disputes between States and Nationals of Other States), the Inter-American Convention on International Trade Arbitration, and the Inter-American Convention on Extraterritorial Efficacy of Foreign Sentences and Arbitration Awards.

With respect to WTO dispute settlement, Peru has been the complainant in the following cases:

E.C. – Trade Description of Scallops (DS 12)

E.C. – Trade Description of Sardines (DS 231)

Peru has been the respondent in the following cases:

Peru – CVD Against Buses from Brazil (DS 112)

Peru – Taxes on Cigarettes (DS227)

Peru – Tax Treatment on Certain Imported Products (DS255)

Peru – Provisional AD on Vegetable Oils from Argentina (DS272)

The consultations on cigarette taxes and the treatment of certain imported products were both withdrawn by Chile after Peru amended the cigarette tax measure and withdrew the tax measure affecting imported products. Amendment and withdrawal of the respective measures resolved these disputes. The CVD on buses dispute and the Provisional AD on vegetable oils dispute were both concluded following consultations.

Peru has participated as third party in the following cases:

EC – Trade Description of Scallops (DS7)

Chile – Taxes on Alcoholic Beverages (DS87, DS110)

Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products (DS207)

EC – Conditions for the Granting of Tariff Preferences to Developing Countries (DS246)

EC – Measures Affecting the Approval and Marketing of Biotech Products (DS291, DS292, DS293)

Peruvian officials noted their objective of increasing their competency in WTO disputes. In previous disputes they relied on the Advisory Centre on WTO Law, but Peruvian officials noted that they intend to increase Peruvian capacity in dispute settlement.

Each of the regional and bilateral free trade agreements that Peru has, and is currently, negotiating includes a dispute settlement provision.

Peru promotes the use of alternative forms of dispute resolution through the General Arbitration Law (Law 26572), which requires that arbitrators promote conciliation, and the Out of Court Conciliation Law (Law 26872) which requires that all cases, other than those concerning “non-

disposable rights”³⁸ proceed through conciliation prior to any court proceedings. The requirement for conciliation prior to litigation was introduced on March 1, 2001. As a result of this requirement, there has been a significant increase in the number of conciliation centres in Peru to 587³⁹ for conciliation prior to litigation. The number of conciliation centres has increased largely because of the requirement that potential litigants proceed through conciliation before they go to Courts.

The Lima Chamber of Arbitration is the primary body for resolving disputes involving foreign investors. The Lima Chamber has heard 1,340 arbitration cases since 1993. The Bar Association also performs this role, but to a lesser degree. The Conciliation Centres are also available to foreign investors, but they almost exclusively serve domestic litigants.

The most important arbitration centres’ websites are the following:

Lima Chamber of Commerce
<http://www.camaralima.org.pe/>

American Chamber of Commerce in Peru- AMCHAM
<http://www.amcham.org.pe/arbitraje/>

Analysis and Dispute Settlement Centre of the Pontificia Universidad Católica del Perú
http://www.pucp.edu.pe/consensos/?dip_socioamb.htm

Bar Association of Lima
<http://www.cal.org.pe/>

Superior Board of Purchases and Contracts of the Government (CONSUCODE)
<http://www.consucode.gob.pe/>

Superintendence of Health Entities Providers (SEPS).
<http://www.seps.gob.pe/ceconar/reglamentos/index.htm>

Supervisory Organization for Private Investment in Telecommunications - OSIPTEL
<http://www.osiptel.gob.pe/Index.ASP?T=P&P=2665>

³⁸ “Non-disposable rights” refers to issues such as matters of public interest, criminal law and constitutional questions that are within the exclusive jurisdiction of the Courts.

³⁹ According the information provided by the Ministry of Justice, there are 587 conciliation centres in Peru currently.

Transparency obligations, subject to the right to protect confidential information as appropriate (eg., business confidential information, government confidential information), are set out in several of the Free Trade Agreements negotiated by Peru. Peruvian officials advised that they support the transparency commitments in these agreements through the dispute settlement process, including the public's right to access to public submissions and public arguments, the right to file *amicus curiae* briefs and, where possible, the right to attend hearings.

Peru also promotes transparency by publishing all laws and regulations on dispute settlement in *El Peruano*, the official Gazette.

The 2003 Discussant noted that he was encouraged by Peru's support of alternative dispute resolution, the use of international arbitration tribunals and its participation in international arbitration conventions. He stated his hope that,

“... Peru will continue their positive approach towards dispute mediation, drawing on and learning from the strengths and competencies of its different arbitral competencies and its experiences in the WTO dispute settlement and the ICSID.”

Assessment

Based on Peru's performance to date, it is obvious that the country supports dispute settlement and the use of alternative dispute resolution. The positive approach that the Discussant noted in the period leading up to 2003 has continued to 2007 and there is no reason to believe that it will not continue in the future.

XIII. Mobility of Business Persons

APEC objective

APEC Economies will:

- a. enhance the mobility of business people who are engaged in the conduct of trade and investment activities in the Asia-Pacific region; and*
- b. enhance the use of information and communication technology (ICT) to facilitate the movement of people across borders, taking into account the Leader's Statement on Counter Terrorism.*

Peru's Approach to Mobility of Business Persons

The Peruvian approach to mobility and immigration is to balance facilitation of travelers and business people with national security needs (particularly the identification and prosecution of high-risk travelers). A foreigner who intends to undertake business activities in Peru, such as signing contracts, should apply for a business visa. However, if a foreigner just wants to visit Peru as a traveler, or hold business meetings, he or she can enter Peru with a tourist visa. On the basis of a tourist visa, the business person can conduct all business activities except signing contracts.

For most APEC Member Economies, it is not necessary to obtain a tourist visa before arriving to Peru. There is special preferential treatment for the Andean Community.

Regulatory regime

The government agency in charge of immigration in Peru is the General Directorate of Immigration and Naturalization (*Dirección General de Migraciones y Naturalización*, DIGEMIN), which is a branch of the Ministry of the Interior. DIGEMIN has implemented a Text of Administrative Procedures (*Texto Unico de Procedimientos Administrativos*, TUPA) that establishes the regulations and requirements for administrative procedures that are aimed at eliminating requirements and reducing procedure costs and time.

Peru's visa regime is based on Legislative Decree No. 703, Foreigner Status Law (Ley de Extranjería), which establishes the migratory and visa categories that can be assigned to a foreigner for entry and stay in Peru. The temporary business visa is granted for up to 90 days and can be extended for up to 30 additional days. The resident visa can be granted for up to one year or extended annually for an additional year.

Law No. 28950, enacted on January 16th 2007, is the law dealing with illicit traffic of migrants.

The Law of Migrations is a draft law that still has not been approved. The draft Law lists activities that can be undertaken by a tourist on the basis of his or her migratory quality and business. The draft Law also outlines family classes for migratory purposes and for family reunification. Finally, the draft Law addresses entry by particular classes of professionals including journalists, voluntary, sports professional, practices pre professionals and internship.

The Law of Migrations is being evaluated by the team of advisers of the Ministry of Interior and some government officials of this institution. This Law is expected to further improve the movement of business persons in Peru.

Business visa

A business visa is required if a foreigner intends to sign contracts in Peru, but it is not needed if a foreigner just intends to participate in meetings or other activities. Temporary business visas authorize admission and allow a business person to remain in Peru for a maximum of 90 days, but this period can be extended. A person entering Peru on a business visa is not permitted to generate income in Peru. Peruvian Consulates across the world, in coordination with DIGEMIN, grant business visas in 48 hours.

For persons resident in Andean Community Members, there is no requirement for a visitors visa for stays of up to 90 days. Temporary entry and stay of service providers and intra-corporate transferees is also permitted.

Residence visa

The residence visa authorizes the admission and residence of a foreigner for one year, but can be extended. The foreigner's legal representative or manager should request a residence visa for up to one year with application to DIGEMIN. The time period granted for the residence visa is based on the working contract or appointment duration. The foreigner's relatives and affiliates are granted the same time period. A foreigner with a resident visa can freely enter and leave Peru during the valid time period. The Law allows foreigners holding a residence visa to undertake commercial transactions and to sign contracts.

Tourist visa

A foreigner can enter Peru as a tourist with a tourist visa, However, a tourist visa holder is neither allowed to sign business contracts nor permitted to generate income. Tourist visas are issued for stays of up to 90 days, and can be extended for additional 30 days in up to two applications.

ABTC

In 2000, Peru joined the APEC Business Travel Card (ABTC) Scheme. In 2003, Peru started to issue ABTCs to its nationals and authorized the entry of foreign ABTC holders. By May 30, 2007, Peru approved applications for 13,507 foreign ABTC cardholders and 98 Peruvian citizens.

Regarding the treatment at the main airport (Jorge Chavez International Airport), all the ABTC holders can use the APEC priority processing lanes when they enter Peru.

Border security

Peru has interconnected almost all its border control posts under the APEC Advanced Passengers Information Initiatives. Peru has also started implementation of the System of Anticipated Air

Transport Passenger Information (SIAPTA) that allows the reception of travelers' information before flight departures.

The program was implemented in two stages. In the first stage, Peruvian public institutions related to passenger air transport integrated their activities in a technological project based initially on the API. For this purpose, they needed to make some modifications to the national laws. In the second stage, the Peruvian Government made contact with the highly-experienced firm International Society of Aeronautical Telecommunications (SITA) to evaluate the costs and the possible implementation of the API in the future.

The next stage of the SIAPTA project undertaken by the Ministry of Foreign Trade and Tourism requires the Ministry to identify possible databases that will optimize the information processing to get an optimal identification of passengers. The work involves DIGEMIN, the Ministry of Interior (National Police) and the Ministry of Foreign Affairs, who are making an analysis of the costs and benefits for upgrading their hardware and software systems. This analysis is still underway.

DIGEMIN and LAN airline are now implementing the API system for flights that arrive in Peru. Once the system is fully implemented, other airlines will be invited to join this system.

Furthermore, the system "SIM-MCM" which was launched in February 2007 (replacing the system "AeroMovMig") to improve passenger identification and control by connecting Immigrations and the National Police Data Base has been fully implemented. This improvement shortens the response time to 12-40 seconds.

Technical cooperation and training activities in APEC

Since 2003, the Canadian and U.S. Embassies in Peru have carried out annual updated courses on examination of fraudulent documentation. The delegation of Australia realized an analysis of the systems and processes used in DIGEMIN. Peru is also interested in receiving technical cooperation and training are immigration controls and passenger processing.

Assessment

Peru has been endeavoring to facilitate business person mobility in APEC by enhancing the use of updated information and communication technology, while recognizing the importance of national security and counter-terrorism by strengthening border inspection and identification of high-risk visitors. Peru also actively participates in capacity-building and technological cooperation programs with other APEC Member Economies.

Peru should seek to make more activities to advertise the advantages of the ABTC system and seeks to encourage its greater use and recognition in Peru.

Some APEC Member Economies are also concerned that foreign business persons are obliged to sign a statutory declaration upon exiting the country that states that they have not received any money for work done during their stay in Peru on the business visa. This procedure is an inconvenience and has caused foreigners some difficulties at the airport, though this requirement was established as a matter of security and taxation. These requirements could be revised to facilitate the flow of business people.

XIV. Free Trade Agreements/Regional Trade Agreements

Peru has been an active participant in multilateral, regional and bilateral trade agreements and has adopted an ambitious program to negotiate and conclude additional trade agreements. Peru's objectives in negotiating free trade agreements is to foster the role of foreign trade as an engine of economic growth and to contribute to Peru's role as the South American hub in the Eastern Pacific.

Peru was a member of the GATT, was an original Member of the WTO and is an active participant in the WTO.

Peru has been a member of the Andean Community since 1969. In 2004 Peru signed an Economic Partnership Agreement with MERCOSUR.

Peru has participated in the Latin American Integration Association since 1980 and has negotiated seven bilateral agreements with Latin American countries under this framework. Peru has also participated in the Free Trade Area of the Americas negotiations since 1995.

With respect to bilateral agreements, Peru concluded four trade agreements between 2006 and 2007,

- (i) Peru – United States Trade Promotion Agreement
- (ii) Peru – Chile Extension of the Economic Partnership Agreement ACE 38
- (iii) Early Harvest Protocol (EHP) between Peru and Thailand
- (iv) Peru – Singapore Free Trade Agreement

Peru is also conducting the following negotiations:

- (i) Negotiations with Mexico for an Extension of the Economic Partnership Agreement ACE 8;
- (ii) Negotiations for a Free Trade Agreement with Canada;

- (iii) Negotiations for a Free Trade Agreement with China;
- (iv) Development of a Joint Feasibility Study for a Free Trade Agreement with Korea;
- (v) Negotiations for a Free Trade Agreement with the European Free Trade Association; and
- (vi) Negotiations for an Association Agreement between the European Union and the Andean Community.

In its IAP Questionnaire Response, Peru noted its long-term objective of negotiating agreements with all APEC Members and that its willingness to enter into negotiations is only limited by its human and financial resources and the time constraints placed on its negotiators. During the meetings in Lima, Peruvian officials advised that their overall objective is to achieve greater market access and trade liberalization through the development of a number of interlocking free trade agreements. While this process will take time, Peruvian officials believe that it complements the Doha procedure. While time will tell whether this approach will successfully result in more market access and greater trade liberalization among APEC Members, this approach will also support the objective of increasing trade flows in and through Peru by making it a hub at the centre of interlocking agreements.

Assessment

Peruvian officials have set an ambitious negotiating schedule. During the meetings in Lima, it was clear that their objective is to conclude negotiations of most proposed trade agreements in 2008 and to move on to the negotiation of new agreements in 2009. Whether they can achieve positive results on this schedule will depend on the willingness of both parties to proceed at this pace. Regardless, it is clear that Peru intends to expand its membership in free trade agreements and, subject to human resource and fiscal limitations, there is no reason to believe that Peru will not continue to expand its membership in Free Trade Agreements into the foreseeable future.

XV. Trade Facilitation

In 2004 Peru launched its Master Plan for Trade Facilitation (MPTF) as part of its National Strategic Exports Plan 2003 – 2013. The purpose of the MPTF was to establish a framework to foster and facilitate trade and to contribute to Peru becoming a more competitive and export-oriented economy.

Peru, through SUNAT, has been moving to implement the trade facilitation objective since 2003. This has involved the development and implementation of a number of projects to facilitate the movement of goods through customs. These projects, which are discussed in greater detail in Section VI: Customs Procedures, include the development of a single window, the adoption of more effective risk management procedures and development of a price database to facilitate customs valuations.

To facilitate trade, Peru has approved the Port's Law Regulation and established the National Development Port Plan, to modernize and develop Peruvian ports. Since 2004, Peruvian ports have met the requirements of the International Ship and Port Facility Security Code (ISPS). Peru has also approved the National Plan of Harbour Development which includes modernization of the port at Callao, which is expected to receive POST PANAMAX ships.

In addition to the initiatives relating to Customs Procedures and Regulation/De-Regulation, which are addressed in Sections VI and X, Peru intends to further implement trade facilitation objectives of the Law 28977 on Foreign Trade Facilitation, to continue modernization of its port infrastructure and to strengthen its Customs Management Integrated System.

In 2008, SUNAT will also complete and deliver workshops to assist users in better understanding and using the new customs procedures, including workshops on advanced customs rulings and workshops on the "single window". SUNAT also intends to conduct a study to identify customs best practices and intends to study the legal framework associated with the ability to use e-invoices.

Peru (SUNAT) has been moving to update the process for handling cargo. Non-invasive equipment is now operation in air and maritime customs operations to examine cargo.

Peru (SUNAT) has instituted a program of permanent communication with customs users through permanent meetings between representatives of unions of foreign trade and Peruvian customs staff.

The Peruvian Customs Capacity building programme has resulted in an increase in the number of Customs staff levels and an increased presence of the physical inspection of imported and exported goods to prevent inspected goods from being damaged and to realize efficient and effective inspection.

Overall, SUNAT is mapping 170 customs processes that may be subject to reduction. SUNAT expects that simplification of these processes will result in an overall cost saving in the range of 20%. Peruvian officials note that Colombia has gone through a similar process and achieved similar savings. Peruvian officials also expect to enjoy cost savings resulting from implementation of the risk management system and development of the port infrastructure.

SUNAT has taken steps to ensure that the business community understands these trade facilitation efforts. User guides concerning maritime shipments and credit have been prepared and posted on the SUNAT website and other guides are being prepared, including a guide concerning air transport. In addition, the Ministry of Foreign Affairs has prepared publication on importing, exporting, marketing in international trade and on financing (a manual aimed at SMEs).

Assessment

Peru has taken positive steps to achieve the APEC trade facilitation goals. While it is not clear that Peru achieved the Shanghai of reducing transaction costs by 5% by 2006, it is clear that Peru is introducing reforms that have and will achieve cost reductions overall. A number of

Ministries are involved in the efforts to achieve the APEC trade facilitation objectives. While Peru has only plans outlined in the Trade Facilitation section of its IAP Questionnaire Response that look ahead to 2008, it is clear that there are longer term objectives to pursue cost savings as part of trade facilitation liberalization. As the movement of goods is a key element in Peru's economic development and in its stated objective of becoming the South American hub, it is likely that Peru will continue to pursue reforms that will facilitate trade.

XVI. The APEC Food System (AFS)

APEC objective

APEC Ministers agreed that the overriding objective in building the APEC food system would be “to efficiently link together food production, food processing and consumption to meet the food needs of our people as an essential part of achieving sustainable growth, equitable development and stability in the APEC region.” Leaders endorsed key recommendations to:

- address rural infrastructure development;*
- disseminate technological advances in food production and processing, and*
- promote trade in food products.*

Peru’s Food System Policies

Since 2005, Peru has bound its tariff rates for most products at 30% except for 29 agricultural tariff items (maize, wheat, rice, sugar, sugar substitutes and some dairy products) with rates bound at 68%. Peru also applies a System of Band Prices for some agricultural goods (maize, rice, sugar, sugar substitutes and some dairy products) that includes minimum and maximum prices allowed for importing these goods. Peru does not apply any non-tariff restrictions on imports of agricultural goods, including prohibitions, export levies, restraints, subsidies or licensing. Sanitary and phytosanitary measures applied for quarantine and food safety are WTO-consistent.

Peru supports the proposal to reduce bound tariffs of agricultural goods in the WTO Doha Round negotiation, while assuring the fullest trade liberalization of tropical and diversification products.

The Peruvian Government encourages Foreign Direct Investment in the agriculture sector. It has devised incentives for developing cultivation and breeding industries by individuals or corporate bodies. These incentives do not apply to the forestry industry.

With regard to food safety, the General Directorate of Environmental Health (DIGESA) of the Ministry of Health (MINSA) is responsible for the safety of industrialized goods, which includes processed foods. The National Service of Animal and Plant Health (SENASA) is responsible for the safety of fresh food products. Peru's food safety regulations are consistent with Codex Alimentarius standards. Peruvian Technical Standards are harmonized with the TBT Code of Good Practice for the Preparation, Adoption and Application of Standards.

Peru is a member of SPS-linked relevant international organizations, such as the International Plant Protection Convention (IPPC), the World Organization for Animal Health (OIE) and the Codex Alimentarius.

With modern infrastructure supported by information technologies, Peruvian Customs has been adopting systematic risk management techniques since 1993. In 1997 this system was improved by establishing the green channel. In 2001, the Risk Management Division was created to centralize this operation. Peruvian Customs Service has also signed agreements with SENASA (National Service of Animal and Plant Health) and MINSA (Ministry of Health) to exchange information.

With respect to Intellectual Property Rights, INDECOPI's Trademarks Office enforces the promotion and protection of geographical indications to improve competitiveness of SMEs, especially of agriculture. Furthermore, INDECOPI's Inventions and New Technologies Office designed a web page to inform the public of traditional knowledge.

Legislative Decree 701 is the national law on the defense of competition, which is applied to all sectors of the economy, including the agricultural sector.

Assessment

It is increasingly important to build an APEC Food System as a comprehensive approach to action in the food sector. The Peruvian Government has recognized the importance of this

approach and is dedicated to shaping a comprehensive food system framework that incorporates relevant policy elements.

Peru has developed a more robust approach to strengthening food and consumer product safety standards by using a scientific risk based approach and Customs border controls.

Peru should continue its efforts to promote a more open environment to facilitate the flow of agricultural goods within the APEC region through on-going trade liberalization programs. Additional capacity building is also urgently needed to promote cooperation for technical infrastructure development and achieve recognition of conformity assessment.

XVII. Transparency

APEC objective

Transparency is a General Principle in the Osaka Action Agenda. To build on this, APEC Leaders agreed in the 2001 Shanghai Accord to develop transparency standards and report progress in the Individual Action Plan. Since 2002, Leaders agreed in the Leaders' Statement to Implement APEC Transparency Standards to General Transparency Standards, including on monetary, financial and fiscal policies and dissemination of macroeconomic policy data, and to area-Specific Transparency Standards on tariffs, non-tariff measures, services, investment, standards and conformance, customs procedures, intellectual property rights, competition policy, deregulation/regulatory review, mobility of business people and government procurement. Leaders agreed to review the Transparency Standards periodically and, where appropriate, review, revise and expand them further.

Peru's approach to transparency

The Government of Peru is committed to the principle of Transparency. All laws and regulations are required to be published in the official newspaper, "El Peruano", to enter in force. Also, the *Transparency and Access to Public Information Law* (Law 27806), approved in 2003, requires the publication of government Acts and ensures the fundamental right of citizens to access to information. The law establishes that all information of the State is presumed to be public, unless expressly determined in the exceptions of a particular law. It also requires that all public entities provide any information requested by individuals.

All laws issued by the Peruvian Congress must be published in advance on the internet while they are still in project. In addition, almost all Regulatory Bodies are obliged to publish their regulations in advance.

The Peruvian Constitution recognizes among other issues, due process and independence of public jurisdiction. This means that individuals have the right to impartial tribunals, reasonable opportunity to present their opinions and the possibility of appeal to a second instance.

Transparency in Monetary, Financial and Fiscal policies and Dissemination of Macroeconomic Policy Data

The Ministry of Economy and Finance (MEF) publishes the Multiannual Macroeconomic Framework (MMF). The MMF contains the Government's main economic policy guidelines and the fiscal policy objectives for the medium term, including policy and preventive measures of the macroeconomic indicators. The Central Reserve Bank (BCR) publishes evaluation reports on monetary policies on a regular basis. The Superintendence of Banking and Insurance is required to publish information in its web pages.

Some of the required publications to be disseminated in public include:

- Semiannual Execution Report on the fulfillment of the MMF's goals;
- Statement Report on Fiscal Responsibility Fulfillment of the preceding fiscal period;
- The Monthly Fiscal Transparency Bulletin

The general public is able to access the following information on the internet:

- Public Finances: The Economic Transparency Portal of the Ministry of Economy and Finance contains updated information related to the management of public finances, such as public sector balance, macroeconomic projections, public expenditure, and tax collection.
- Monetary and Financial information: The Central Reserve Bank (BCR) webpage publishes its on-line Weekly (*Nota Semanal*), Quarterly (Inflation Report) and Annual (Annual Memory) Bulletin. The Superintendence of Banking and Insurance (SBS) also releases financial data and policy information regularly.

Area-specific transparency standards

Peru has introduced a number of concrete measures to implement APEC transparency standards in many specific areas or sectors. The main achievements are summarized as follows.

Tariff and NTBs

- All tariff changes must be published in El Peruano, on the El Peruano website, the website of the National Superintendence of Tax Administration (SUNAT) and the Ministry of Economics and Finance.

Investment

- Peru has included transparency provisions in its bilateral investment agreements, such as the TPA with USA and the FTAs with Singapore and Chile, and they are also part of the negotiations with Canada and Thailand and included in the recent negotiations for updating the BIT with Colombia.
- In June 2007, Peru updated the sixth edition of APEC Investment Guidebook.

Standards and conformance

- INDECOPI has published the mandatory PTS, Metrology Standards (MS) and Technical Regulations on its web site. All these standards are submitted to a public discussion process before the publication.
- Under the Andean Community framework, a website was developed to publish all notifications and technical regulation proposals from Peru, Colombia, Ecuador and Bolivia.
- The Ministry of Economy and Finance enacted the Decree Supreme N° 149-2005-EF, which encourages all government agencies to implement transparency mechanisms for all technical regulations consistent with WTO TBT Agreement obligations.

Trade facilitation

- The Law of Trade Facilitation (Law N° 28977) published on February 2007 directs the Customs Authority to publish the laws, regulations and procedures of a general nature that regulate each special customs regime, operation or destiny via Internet or other means. The Customs Authority is required to establish contact points for public consultations and to publish via the internet procedures for the submission of comments on those documents. This program is expected to enter into force by the end of 2007.

Intellectual Property Rights

- The norms related to intellectual property rights have been all published on INDECOPI's web site.
- INDECOPI's administrative procedure contains the instructions for the registry of intellectual property rights, which are published on INDECOPI's web site.
- The norms are pre-published on INDECOPI's web site 15 days before they are formally published in order to receive public comments.
- The enforcement of the intellectual property normative is under constant review.
- The INDECOPI Press Office is responsible for keeping the general public informed of all the efforts made to protect the intellectual property rights.

Government procurement

- Since 2004, the Peruvian Government has required that all public entities at all levels of government, including public enterprises, must use the Electronic Government Procurement System (SEACE). This on-line system constitutes a single entry point enabling suppliers to access information on procurement opportunities in the whole country.
- The Peruvian transparency regulation establishes that all state enterprises are obliged

- to publish all procurement information on their web sites.
- Since 2005, all public entities have been required to release all tendering information on the electronic system (SEACE), which is the only official means of publishing this information.

Deregulation/regulatory review

- Like Law 27806, the Administration enacted Decree Supreme N° 072 -2003- PCM, which established procedures to access information related to public affairs, such as public finance.
- In August 2004, Law 28335 reinforced the CAM faculties in administrative simplification issues and other arrangements, to improve its supervision of public activity. This law also created an indicator to show which local entities have more bureaucratic barriers to citizens or businesses.
- In 2005, the Peruvian Government enacted Decree Supreme N° 042-2005-PCM, which required that all regulatory agencies implement transparency and disclosure mechanisms.
- In 2005, the Ministry of Health implemented a transparency and quality mechanism (Ministerial Resolution N° 826-2005-MINSA) for all health regulations.
- In 2006, the Ministry of Economy and Finance enacted Ministerial Resolution N° 639-2006-EF/67 to establish a quality control and transparency mechanism for all regulations that will be implemented by the Ministry.

Assessment

Peru's transparency standards have been systematically improved. Through Government effort and modern IT development, Peru has implemented many methods for promoting transparency including publishing official journals, establishing contact points and releasing data and policy information on the regular basis. Peruvian citizens, the business community and other stakeholders have all benefited from this dramatic progress. These measures also enable

government agencies, and particularly regulatory bodies, to more efficiently receive comments and to respond to public inquiries.

Peru should maintain its dedication to enhancing transparency standards by providing information on laws, regulations and procedures to interested persons or groups in a more prompt, simplified and easily accessible manner. In addition, the next stage of work on transparency should focus more attention and resources on regional and local governments.

5. Annexes

A. Members of the Review Team

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B. Questionnaire and Peru's Responses

Chapter 1 Tariffs

Q1. (Australia) It is noted in Chapter 1 that "Peru maintains in WTO a bound tariff rate at 30% for most tariff lines, except 29 agricultural tariff lines (maize, wheat, rice, sugar, sugar substitutes and some dairy products), that have higher bound tariff which converge to a flat bound tariff of 68% since 2005." While we understand that Peru is a G33 country and these are products of national sensitivity, the 68% bound tariff is high.

(a) What future action does Peru intend to take in reducing tariffs on agricultural goods now that Peru has joined the Cairns Group?

Within the framework of the multilateral negotiations, Peru has been participating actively in WTO's agricultural negotiations. Also, like member of the Cairns Group, Peru is supporting the proposals that they have the objective to guarantee a free access to the agricultural products, whenever they respect the developing countries special and Differentiated Treatment.

In this frame, the reduction of duties of agriculture products will adjust to the commitments and results of the WTO's negotiations.

Additionally, the Peruvian consolidated tariff reported to WTO is of 68%, for example it is notice that the nominal tariff of the wheat is 0%, whereas, in the months of July and August of the 2007, NMF product tariff in the system of Band Price is 0% for the corn and it did not surpass 2% in the cases of the sugar and milky products. It is result of the tariff reductions under the system of band prices, and the high international prices for these products.

**TABLE N° 1
EFFECTIVE TARIFF (%)**

MONTH	WHEAT	MAÍZE *	RICE *	SUGGAR *	DAIRY *
Jan. 2007	16.1	0.0	20.6	0.0	9.0
Feb. 2007	15.0	0.0	21.3	0.0	7.0
Mar. 2007	16.3	0.0	22.5	0.4	21.4
Apr. 2007	16.2	0.0	22.5	0.1	6.8
May. 2007	15.4	0.0	21.9	0.5	1.5
Jun. 2007	17.0	0.0	20.5	0.9	4.8
Jul. 2007	0.0	0.0	18.4	0.7	1.6

Aug. 2007	0.0	0.0	17.5	0.6	0.2
(*) In “Sistema Peruano de Franja de Precios”.					

- Q2. (Hong Kong, China) We commend Peru for its efforts in the unilateral reduction of tariff levels and tariff dispersion during the past few years, and its active participation in the multilateral trade liberalization efforts within the WTO. We encourage Peru to further reduce its tariffs, particularly in respect of products with relatively higher applied rates.**

According to the Tariff Policy Guidelines (Ministerial Resolution N° 005-2006-EF), Peru like a small developing economy, has been reduced gradually its tariffs, because the policy reduce the operational costs of the economy, rise the welfare of population, open the market to quality goods for the consumer and capital and labor dependent firms; simplify the policy management, and facilitate the customs operation.

To summarize the tariff liberalization reduces the average and the tariff dispersion, which will lead us to the long term tariff convergence. In Accordance with all these reasons, since 2001, Peru has been reduced his tariffs in important magnitudes. In that way, the tariff average has diminished of 13,5% in December from 2000 to 8,0% in 2007 July.

**TABLE N° 2
AVERAGE TARIFF**

YEAR	NOMINAL AVERAGE TARIFF
2000	13.5
2001	11.8
2002	10.9
2003	10.4
2004	10.2
2005	10.1
2006	8.3
July 2007	8.0

- Q3. (ABAC) It is requested that GOP repeals the payment obligation of the IGV upon import customs clearance.***
- Q4. (ABAC) It is requested that GOP improves the unfairness in the tax levy between new cars and altered used cars.***

Q5. (ABAC) It is requested that GOP improves the unfair taxation system between the imported new cars and altered and used cars.*

Q6. Peru indicates that most tariff lines are subject to a 30% bound tariff. Does Peru intend to progressively reduce the bound rates to achieve its Bogor goals and, if so, over what period of time does Peru propose to reduce these bound tariff rates?

Peru has been reducing its bound tariffs in accordance with his assumed compromise in WTO negotiations.

Q7. Peru currently maintains five applied tariffs for all agricultural and industrial goods, ranging from 0% to 25%. The majority of Peru's tariff lines are subject to 0% duties. In its 2007 IAP, Peru has noted "five temporary points tariff surcharge for some agricultural and industrial items". With respect to this comment,

(i) Could Peru please confirm that the reference to "five temporary points tariff surcharge" is a reference to the five tariff levels outlined in the 2007 IAP?

No, "five temporary points tariff surcharge" is distinct from the five tariff levels outlined in the 2007 IAP.

(ii) If the "five temporary points tariff surcharge" is distinct from the five tariff levels, could Peru please provide an explanation of the "five temporary points tariff surcharge" and their application?

In 1997, the tariff additional over-percentage was created by Supreme Decree N° 035-97-EF, and its denomination was "additional tariff right" (Supreme Decree N° 017-2007-EF). At this moment, the rate of the additional tariff right is of 5% and it is applied on CIF import value.

The additional tariff right was applied to 323 tariff lines until July 2007. At the moment, it is applied to only 89 tariff lines. Of these, 27 lines are in the level of 17% (12% + 5%) and 62 lines are in the 25% level (20% + 5%).

**TABLE N° 3
NUMBER OF TARIFF LINES**

TARIFF LEVEL	July 18th 2007	July 19th 2007
---------------------	----------------------------------	----------------------------------

0		3 203
10		1
12	5 476	3 014
12+5	39	27
20	728	1 044
20+5	284	62
Total	6 527	7 351

- (iii) If the “five temporary points tariff surcharge” is a reference to the five tariff levels, could Peru please provide a list of goods subject to the 20% and 25% tariff levels?

It is not a reference.

- Q8. Could Peru please further explain the process undertaken to reduce its tariffs to their current levels? Did Peru institute a specific policy of tariff reduction or did the tariff reduction result from an *ad hoc* process? How long did it take for Peru to reduce its tariffs to their current levels?**

Peru maintains a tariff policy design established through the Ministerial Resolution N° 005-2006-EF/15. In this norm one arranges that the reduction of the tariff average and dispersion cannot be obtained anyway but limiting both routes the tariff reduction of all items or to very ample sets of them.

- Q9. Peru has referred to the U.S. coca leaf substitution scheme. Could Peru please explain how this scheme benefits Peru?**

- Q10. Could Peru please provide copies of the following documents:**

Supreme Decree No. 115-2001-EF Variable Specific Duties
Supreme Decree No. 001-2002-EF Updated Customs Table
Supreme Decree No. 153-2002-EF Sugar Customs Table

* Background information regarding the questions from the ABAC are set out in Annex A, ABAC for Trade and Investment Facilitation, Issues and Requests Relating to Foreign Trade and Investment – PERU.

Chapter 2 Non-Tariff Measures

- Q11. (Australia) In 2006, Australia's largest export to Peru was milk and cream (A\$6 million). As some of these dairy products are covered by Peru's price banding system, Australia is interested in Peru's perspective of the implications of the WTO's recent decision on Chile's price banding system for the system used in Peru.**

In contrast to the Chilean system, the total tariffs of subject products to the Peruvian Strips of Price System (SFP) have not exceeded nor will exceed the consolidated tariff (Supreme Decree N° 153-2002-EF). Also, the methodology, coverage and administration are published in the Official Newspaper the Peruvian. Therefore, the economic agents can consider the prices floor, referential ceiling and, as well as the additional rights or tariff reductions that turn out to apply this system.

It is important to indicate that the Peruvian system has the objective to stabilize the import prices of subject products, gathering to medium term tendencies of the international market. In that sense, given the present tendency of the international prices, the application of the Peruvian system produce a reduction of some tariff product like dust milk, that it has a consolidated tariff of 68%, a tariff ad valorem of 20% and it is holds to the strip prices, but it has entered our country with a tariff of 2% in the month of August of 2007. This allows that the imports of these products enter the Peruvian market with a total tariff near the zero percent

Q12. (Hong Kong, China) We note that Peru's NTMs are applied only for environmental, health, preservation of biodiversity, protection of cultural heritage and internal security reasons. We encourage Peru to regularly review its NTMs with a view to reducing their use as far as possible.

Since 1992, The Ministry of Economy and Finance (MEF) has the authority to make an ex ante review of all NTM in accordance with the Law 25909 and Law 25629. The review consists on check the legality and reasonability of the measure in accordance of with the regulatory principles established by the Constitutional Courts, WTO and INDECOPI.

Under this authority, MEF and the Ministry of Foreign Trade and Tourism (MINCETUR for acronym in Spanish) made an inventory and a regulatory review of main Non Tariff Measures in 2005. This review consisted in check the legality and reasonability of measure to protect the consumer. Most measures reviewed past the legality and reasonability test. The next review is conditioned by implementation the ex ante regulatory quality control mechanism that it will finish around 2009.

Q13. (ABAC) It is requested that the authority reviews the conditions that apply to drawback.*

Q14. Peru refers to legislation governing import surcharges. Could Peru please explain the import surcharges and how they are applied?

It has answered at the tariff section.

Q15. Peru refers to Article 118, Political Constitution of Peru in connection with import surcharges. Could Peru please provide a copy of this Section and explain its relevance to import surcharges?

It has answered at the tariff section.

Q16. Peru has indicated that it imposes no quantitative import restrictions or prohibitions other than for sanitary, health, internal security, environmental biodiversity and cultural heritage protection. Could Peru please indicate how many such measures are currently in place and against which products from which countries? Could Peru please break down those measures by objective (ie., sanitary measures, health measures, etc)? Could Peru please explain the basis for maintaining such measures to achieve environmental biodiversity?

* Background information regarding the questions from the ABAC are set out in Annex A, ABAC for Trade and Investment Facilitation, Issues and Requests Relating to Foreign Trade and Investment – PERU.

Chapter 3. Services

Q17. (Australia) Services/Business Mobility: Peru requires Australians to have a business visa if they plan to sign official documents or contracts in Peru and under these they cannot generate an income while there (see Chapters 3 and 13). Peru joined the APEC Business Travel Card (ABTC) scheme in February 2001, but its adoption and uptake is slow in Peru, so more could be done to advertise its advantages and encourage greater use and recognition in Peru. According to Austrade, business people are also obliged to sign a statutory declaration upon exiting the country that states that they have not received any money for work done during their stay in Peru on the business visa. This procedure is an inconvenience and has caused some Australians difficulties at the airport. These requirements could be revised to facilitate the flow of business people.

SUNAT (Custom and Tax Office) has established that every foreigner with a business visa that leaves the country must fulfill a sworn statement that states that they have not received any money for work during their stay in Peru.

This requirement was established as a matter of security because it ensures that there is not any tax evasion by the foreigners. In this sense, after receiving all the statements, the SUNAT can be sure that the foreigners with business visa have not had the obligation to pay taxes during their stay in Peru.

This requirement should not be considered as a migratory procedure because its purpose is related to the taxation matters and it does not affect the activities of foreigners with a business visa. Peru considers this measure is applied on a taxation basis and it does not belong to migratory issues.

Q18. (Australia) Energy Services: The energy sector is a sensitive one because of the need to ensure domestic supply, but Chapter 3(I) notes that in Peru foreign companies must have an address in Lima (the capital, rather than the country) and also name an Agent Chief Executive of Peruvian nationality who also has an address in Lima. Even taking national interest issues into account, these measures seem overly restrictive and could be eased to encourage investment. Australia also requires foreign energy service providers to have an Australian outlet, but we are less restrictive in terms of where the outlet is located and do not require an Australian agent. Austrade has advised that while there haven't been any Australian investors in power generation in Peru yet, there are currently several bids to take over either hydro-electricity plants or access LPG to power ammonia plants.

Thank you for your interest about this sector. There's a mistake in Peru's IAP report in this section. According to the General Law of Hydrocarbones, in order to celebrate exploration contracts foreign companies, need to establish a branch or to constitute a society according to the General Law of Societies, with an address in Lima and to name a representative (not a of Executive Chief as said in the report) of Peruvian nationality.

These requirements are only for regulatory purpose and are not intended to be restrictions to foreign investment.

Perupetro is the company in charge of the investment promotion on activities related to the exploration and exploitation of hydrocarbons. Also, it is in charge of negotiating, signing and supervising contracts in representation of the Peruvian government.

As in other sectors, Energy sector is widely open to foreign investment. In this sense, there are 65 exploration and exploitation contracts in force with 44 companies, in which 36 of them are foreign companies.

Q19. (Australia) Education Services. Australia would encourage fair and transparent assessment of foreign qualifications for the purposes of access to professional practice and further study and for general employment, and advocates recognition on the basis of learning outcomes rather than years of study alone.

In this case, the National Rector's Assembly grants automatic recognition of a degree when there is an Agreement of Cultural Reciprocity between Peru and the county where the professional who asks for the recognition comes from.

If there is not an agreement between Peru and the other country, the ANR makes an assessment of the university studies made by that professional.

In this assessment the ANR concludes if there is a "reasonable equivalence" between the studies made by that professional and the studies required in Peru for the same

degree. This evaluation lets the ANR know if the knowledge of that professional fulfills with the requirements of the Peruvian higher education system.

This evaluation includes two issues. One of these is the number of years that took to that professional to obtain his degree. For example, a Peruvian doctor must study almost 8 years in order to obtain his degree. If a foreign doctor comes to Peru and he has studied just 5 years, this could be a sign that there is not a reasonable equivalence in the degrees. If it is true that this criteria is based on the time of studies, this criteria is a sign of the knowledge of a professional. In the example of the doctors, the three years are not only a time matter, they represent hours of study for that professional. It is not an arbitrary decision based on years.

The other issue is related to the basic subjects studied by the professionals. The ANR evaluates if there is a “reasonable equivalence” between the basic subjects studied by the petitioner and the professions in Peru. For example, if the petitioner is an engineer and after the evaluation the ANR realizes that he has not study Statistic, Math and Logics, which are basic subjects in Peru for engineering, there is not

Q20. (Chinese Taipei) Energy Services Chinese Taipei appreciates the Peruvian government’s efforts to implement policies that aim to facilitate trade and investment, reduce trade barriers, and strengthen energy security in the APEC region. We believe that the Peruvian government’s efforts will definitely make a major contribution to energy development in the APEC region as a whole, so we would like to thank you very much.

Thanks a lot for your positive words.

Q21. (Chinese Taipei) The liberalization of construction services is helpful toward the transfer and exchange of new construction technologies from abroad. Under the items pertaining to foreign entry and differential treatment / MFN treatment in construction and related engineering services, Peru mentions that it gives “bonus points” to Peruvian nationals in the bidding for public construction projects. This seems to present a barrier to foreign construction firms seeking to enter Peru’s market for the purpose of providing service or investing. We would therefore like to ask Peru to explain whether it has any plan to reduce or eliminate the bonus point system in the future.

There is a 20% bonus for goods and services (included construction services), produced in Peru, given to the total technical and economic valuation of the proposal. In the case that Peru negotiates Free Trade Agreements (FTA) that include a Government Procurement Chapter, because of the application of the national treatment obligation, Peru will give the 20% bonus to its respective counterpart automatically without the requirement of the use of goods and services produced in Peru.

This bonus does not constitute a market access restriction. Any foreigner company may participate in a tendering procedure any time. But, if the company used goods or services produced in Peru, then it will receive a 20% bonus.

It is important to mention that since last year, there exist several projects of laws in the Congress in order to derogate or limit for specific sectors the scope of this measure.

Q22. (Hong Kong, China) Tourism & Travel Related Services. In general, we support measures that remove impediments to tourism business and investment. Thus, we welcome Peru to foster investment in tourism related services through deregulation and more favorable tax regime.

In Peru, all goods and services are taxed with 19% (IGV). Restaurants and hotels add a 10% service fee.

By law, foreign tourists who take lodgment services in our country are tax exempted of payment of the 19% IGV.

According to recent statistics, foster investment in tourism has increased in comparison with the last five years, reaching 62 millions of dollars in 2006.

Q23. (Hong Kong, China) Tourism & Travel Related Services. Also, we understand that Peru is implementing a transfer process of tourism functions from the Ministry of Foreign Trade and Tourism (Mincetur) to Regional Governments. We hope the local governments can be consistent in handling the applications from foreign service suppliers and the granting of authorizations are standards-based.

According to the Peruvian legislation, the functions and faculties in tourist aspects that were transferred to Regional Governments are:

- a) Formulate, approve, execute, evaluate, control and administer the policies in the matter of development of the regional tourist activity, in agreement with the general policy of the Government and the sectorial plans.
- b) Formulate, approve and execute the strategies and the program of tourist development of the region
- c) Approve general guidelines related to the tourist activity, as well as technical criteria that assure the fulfillment objectives and goals that are derived from the guidelines of the national policy of tourism
- d) Promote the tourist development by means of the advantage of the regional potentialities
- e) Score tourist operators of the region, in agreement with the corresponding legal norms
- f) Coordinate with the local governments the actions in the matter of tourism of regional reach

- g) Take and maintain updated the directories of tourist operators, calendars of events and the inventory of tourist resources, in the region, according to the methodology established by MINCETUR
- h) Identify possibilities of investment and zones of tourist interest in the region, as well as to promote the participation of the investors interested in tourist projects
- i) Propose and declare zones of priority tourist development of regional scope
- j) Arrange facilities and safety measures to the tourists, as well as to execute regional campaigns of protection to the tourist and diffusion of tourist conscience, in coordination with other public and private institutions
- k) Verify the fulfillment of the environmental legislation and preservation of natural resources of the region, related to the tourist activity
- l) Declare events of regional tourist interest
- m) Supervise the right application of the legislation related to the tourist activity and the fulfillment of the demanded standards to the tourist operators of the region, as well as to apply the corresponding punishment in case of breach, according to the related legislation
- n) Subscribe contracts, agreements or institutional cooperation agreements with public or private organizations
- o) Promote training and qualification of the personnel who participates in the tourist activity
- p) Foment the organization and formalization of the tourist activities of the region
- q) Organize and lead the activities of tourist promotion of the region in coordination with the local organizations of the tourist activity and Governments
- r) Develop tourist circuits that can become axes of the regional development

The Ministry of Foreign Trade and Tourism – MINCETUR is working with Regional Governments in order to assume and implement correctly these transferred functions. MINCETUR is the institution in charge of establishing the tourism policy and supervise the right fulfillment of the preceding functions in order to develop the tourist activity.

Q24. (Hong Kong, China) Tourism & Travel Related Services. Concerning the manuals of good practices being developed by the Mincetur, we hope the ideas in sustainable development of tourism (e.g. protecting natural environment, preserving indigenous cultures) can be incorporated and manifested in the manuals.

The Ministry of Foreign Trade and Tourism - MINCETUR has been working in:

- Manual of Good Practices in Service Management for Lodgments, Travel Agencies and Tourist Guides which are specifically guided to look for and to offer best quality of services in Tourism
- Manual of Good Environmental Practices for Lodgments which has mainly incorporated the protection of natural environment through its objectives.

Also, we have approved the Guidelines for the Development of Communitarian Rural Tourism in Peru that has incorporated the protection of natural environment and preservation of indigenous cultures, through community activities that look for interchange of experiences among communities to develop the rural tourism in the best way.

Q25. (China) Education Services. What measures has Peru taken to facilitate the international mobility of foreign students, including mutual recognition of academic diplomas and degrees?

Peruvian government subscribes agreements of cultural interchange that allows the recognition of degrees and titles obtained by foreigners or Peruvians in the country with which the agreement is subscribed. The Asamblea Nacional de Rectores recognizes professional diplomas of academic degrees and titles from universities of countries with which Peru has signed a cultural reciprocity agreement of cultural exists.

Q26. (China) Education Services. What are the legal regulations and requirements for foreign entities to set up foreign language teaching institutions or examination centers in Peru? What facilitation measures can be provided by Peru?

In order to provide educational services in foreign languages, there are two possibilities:

A. As a Language Center (Centro de Idiomas) it is necessary to establish a legal organization (usually a non profit civil organization) whose main objective is to teach foreign languages. Whereas the certificates from this kind of center are not officially recognized by the Ministry of Education, the center may be officially recognized as a Cultural Center by the National Institute of Culture.

To establish a Language Center the requirements are the same as pointed out in 3.1 (Q27, below), other requirements may be requested by the Ministry of Education according to the legislation at the moment the application is made.

B. As a Private Higher Education Technological Institute (Instituto Superior Tecnológico Privado, IST) that offers foreign language courses in its curriculum, the Ministry of Education officially recognizes concluded studies.

The requirements for establishing an IST are the same as mentioned in 3.2 (Q27, below)

Q27. (China) Education Services. What are the restrictions and requirements on education services conducted by foreign providers (e.g. legal entities and foreign language teachers) in Peru?

In order for foreign providers to offer educational services in Peru, the level of educational services to be offered has to be taken into consideration:

3.1 Basic Education level (pre-school, primary, secondary), the following is necessary:

- Establish a legal entity or as an individual.
- Internal guidelines that contain the educational purposes of the center, among other items.
- An affidavit with the name, legal standing of the owner, information on the educational levels and educational services to be delivered, a summary of pedagogical principles and methodology, probable number of students and sections, name of the Director and members of the Board of Directors if applicable, a proposal of the internal organization and regulations, and an inventory of the equipment and material goods that the center will have on starting operation.
- Educational programs and plans.
- Have a Director (with a college degree, or titled as a teacher).

3. 2 In order to provide educational services as a Private Higher Education Technological Institute (IST), the following procedure is necessary:

1. PROPOSAL: A Certificate of Approval for a Higher Education Institution Proposal, and a Certificate for Professional Career, for which it is necessary to present a proposal for a Higher Education Institution - which deal with the institutional, administrative, financial, HHRR and infrastructure aspects, equipment and furnishings- and one for Professional Career which deals with the curriculum.

The certificates will be granted no later than 30 days once the documents have been presented

2. VERIFICATION: Once the mentioned Certificates are obtained, a Certificate of Security and a Certificate of Habitability must also be presented, certifying the ownership of the location.

Once all the documents have been presented, a site inspection will take place no more than 20 days later.

A verification Certificate will be granted if there are no observations in the presented documents or resulting from the site visit.

3. AUTHORIZATION: The certificates obtained in steps 1 and 2, as well as a Timeline of Implementation of the Proposal of Higher Educational or Professional Career Institution. The Authorization Certificate will be granted no more than 30 days later . This Authorization Certificate has a duration of 6 years. Revalidation can be sought out every 8 years.

In both cases (both questions), if foreign teachers wish to work in Peru, there are mechanisms for revalidation of their degrees, in order to recognize the studies they have made in their country of origin.

In Peru, there is no discriminatory treatment for foreign investment, it receives the same treatment as national investment. However, foreigners cannot acquire or have: mines, land, forest, resources such as water, fuel or energy, directly or indirectly, individually or in partnership. Exceptions can be made in case of public need, expressly declared by a Supreme Decree (Decreto Supremo), approved by the Council of Ministers, and according to the law.

Legal Bases Used:

Peruvian Constitution – 1993

General Education Law - N° 28044

Private Educational Centers Law - N° 26549

Guidelines of Creation, Authorization, and Revalidation of Operation of Non University Higher Education Technological Institutes – Supreme Decree N° 014-2002-ED, modified by Supreme Decree N° 023-2006-ED

Law for the Promotion of Investment in Education – Legislative Decree N° 882

Ministry of Education's Sole Text of Administrative Procedures

Chapter 4. Investment

Q28. (ABAC) It is requested that GOP repeals the mining royalty (regalia minera) or maintains it at the minimal rate.*

Currently, according to the Law N° 28258, the Law of Mining Royalty, (modified on august 10, 2004 by Law N° 28323), there are three established levels for the payment of mining royalty in accordance with the total annual value of the concentrate of each company. The three ranges are: (i) up to US\$ 60 million, the company pays 1% of its income as royalty; (ii) from US\$60 million to US\$120 million, the company pays 2%; and, over US\$ 120 million, the company pays 3%. In the case of minerals that do not have international market quotes, it shall be paid for royalties 1% of the mining component. The amount paid for mining royalty is considered as “cost” for income tax purposes in the respective year.

The same year that the Law of Mining Royalty entered into force, the National Society of Mining, Oil and Energy (SNMPE, for its Spanish acronym) appealed to the Peruvian Constitutional Court to declare the Law of Mining Royalty as unconstitutional. However, in April 2005, the appeal was considered unfounded.

No modification on the investment policy in the mining industry has been considered.

Q29. (ABAC) It is requested that GOP repeals introduction of the mining levy.*

As stated in the aforementioned answer the Law of Mining Royalty has not been modified since 2004 and it is not planned to.

Q30. (ABAC) It is requested that GOP establishes a system that exempts tax on environment related investments (for preventing pollution).*

No modification on the investment policy in the mining industry has been considered.

Q31. (ABAC) It is requested that GOP establishes a contribution fund (tax-free) for investment in environmental protection.*

No modification on the investment policy in the mining industry has been considered.

Q32. Peru has sent an application letter to the OECD indicating Peru's intention to adhere to the *OECD Declaration on International Investment and Multinational Enterprises and Related Act* and to participate in the *OECD Investment Committee*. Could Peru please advise whether it has had a response from the OECD and, if not, when it expects to receive a response? If Peru has received a response, could it please advise whether the response was positive? At this point, is Peru currently adhering to the OECD Declaration and, if so, does Peru intend to adhere to the Declaration regardless of the OECD response?

By a letter dated December 2nd, 2006, from Mr. Jorge del Castillo, Chairman of ProInversion Steering Council, Peru applied for adherence to the OECD Declaration on International Investment and Multinational Enterprises and requested to participate in related work of the OECD Investment Committee. The OECD's Investment Committee first considered this request in March 2007 and then transmitted its recommendation to the OECD Council in order to evaluate Peru's application during next Investment Committee meeting.

In the case of acceptance by the OECD Council, Peru will be invited to adhere to the Declaration and participate in related work of the Investment Committee, subject to a full review of its investment policy. This review intends to confirm the country's ability and willingness to comply with all requirements of the Declaration, including the National Treatment Instrument and the Guidelines for Multinational Enterprises.

According to a recent communication from its officials, the OCDE will inform Peruvian authorities about the outcome of the OECD Council's considerations, as soon as the procedure is completed, hopefully in Fall.

Q33. Peru indicates that it intends to develop a comprehensive program, including investment promotion, to support specific activities, including: agribusiness, biofuels, petrochemicals based on natural gas, developing SMEs, developing links with transnational corporations operating in Peru. Could Peru please advise whether development of the investment program is imminent or long term? If the investment program is imminent, could Peru please provide the outlines of the plan and how it would support investment in the specific activities identified?

In order to carry out the referred program, the terms of reference have been elaborated for developing a cooperation project with UNCTAD involving three modules: investment promotion, development of business links and strengthening of small and medium-sized enterprises (PYMES). The program requires a financing of US\$ 1.5 million for a period of three years; we are currently in the stage of contacting cooperation bodies. A summary of the project can be found below:

Module I: Focused Investment Promotion

Objective 1: Development of regional investment promotion plans in sectors considered as priorities by the Government (mainly tourism and services based on information technologies).

Product 1: Sector investment promotion plans for at least two regions of the country.

Objective 2: Implementation of the investment promotion plans developed in tourism and services based on information technologies.

Product 2: Promotion campaign in sectors prioritized by the Government.

Result expected: From 5 to 6 investment interest expressions (visits to companies/local operators) thanks to the focused investment strategy; establishing at least 2 business links between large investment companies and enterprises and/or local operators.

Module II: Business Links

Objective 1: Development of business links between transnational companies (TNC), large national companies and local small and local PYMEs.

Product 1: Identification of obstacles and necessary changes for the improvement of business policies and incentives.

Objective 2: Raising awareness of TNCs, large national companies, local PYMEs, local authorities and partners through promoters of the importance and benefits of business links formation.

Product 2: Obtaining interest expressions and commitment of TNC and/or large national companies to be part of the "Business Links" program.

Result expected: At least 5 TNCs and/or large national companies willing to establish formal links with local companies; and at least 25 agreements of business links ready to be signed with transnational companies.

Module III: EMPRETEC

Objective 1: Establishment and promotion of a basic support structure for small and medium-sized enterprises in Peru to assist local entrepreneurs in their business expansion and development of their entrepreneurial competences and business skills.

Product 1: Installation of the EMPRETEC program in Peru.

Objective 2: Implementation of the EMPRETEC program, through training local entrepreneurs to promote an entrepreneurial and responsible attitude for local small and medium-sized enterprises, contributing to increasing their production capacities and improving the local offer's quality standards.

Product 2: Implementation of entrepreneurial capacities development workshops and the creation of a training system with qualified local instructors. Provision of other related business development services.

Result expected: Updated and adapted training materials; training of about 100 entrepreneurs selected for the first year (at least 30% women), 3 local instructors certified by UNCTAD; business plans selected for their promotion and development.

Objective 3: Promotion of partnerships between entrepreneurs and formation of clusters, development and diffusion of the best business practices through the creation of contact networks of entrepreneurs in Peru with other countries of LAIA (Latin American Integration Association) and on an international level, using the Global Network of EMPRETEC comprised by all the EMPRETEC centers in the world^[40] and their associated

Q34. Peru indicates that National Treatment and MFN treatment regarding post-establishment are recognized in all Peru's Bilateral Investment Treaties, but that these principles are not agreed as to the establishment or acquisition of an investment. Peru notes that, "no special authorization neither performance requirements exists for foreign investments". Could Peru please confirm whether it accords National Treatment and MFN treatment to foreign investors and investments? If so, could Peru please explain the basis upon which it determines whether foreign investors or investments are "like" domestic investors or investments for purposes of National Treatment and MFN treatment?

Peru confirms that it accords National Treatment and MFN treatment to foreign investors and investments. The basis of this statement can be found in Peru's Political Constitution; Legislative Decree N° 662, that establishes the Regime of Juridical Stability for Foreign Investment; and Legislative Decree N° 757, that establishes the Framework Law for Private Investment Law. Article 63 of Peru's Political Constitution provides that domestic and foreign investments are subject to the same

^[40] Nowadays, EMPRETEC is present in several countries of Latin America (most LAIA countries), Africa, Middle East, Eastern Europe and it is expanding to Asia.

conditions. Likewise, according to Article 2 of Legislative Decree N° 662, “foreign investors and the companies in which these participate have the same rights and obligations as the local investors and companies. (...) In no case the domestic juridical regulations will discriminate among investors or the companies based on the local or foreign share in the investments.”

Is important to mention that, according to Article 3 of Legislative Decree N° 662, foreign investment made in the country are allowed without restrictions in most economic activities and does not require prior approval because is automatically authorized. Likewise, foreign investments shall be registered before PROINVERSIÓN in order to obtain the guarantee of the right to transfer abroad without any authorization and prior payment of legal taxes, the total amount of capital, profits and royalties; and the right to use the most favorable purchase/sale exchange rate at the time of an exchange transaction.

Regarding ownership, foreign individuals or corporate bodies are in the same conditions as Peruvians, as stated in Article 71 of the Peru’s Political Constitution. However, foreigners may not acquire or own for any reason, directly or indirectly, mines, lands, woods, water, fuels, energy sources, within fifty kilometers from the borders, except in case of public necessity, expressly declared by Supreme Decree approved by the Cabinet.

Every enterprise has the right to organize and develop its activities under the form it deems appropriate. Thus, Article 9 of Legislative Decree N° 757 states that all legal provisions establishing production methods or production indexes are repealed. No prohibition or requirement to use certain inputs or technological processes, and, in general, no intervention in production processes of companies based on the type of economic activity, installed capacity, or any other similar economic factor is allowed. Exceptions are made for legal provisions over hygiene and industrial security, environment conservation and health.

Q35. Please provide English language versions of the following documents:

General Law of Expropriation, Law No. 27177

Law of Arbitration, Law No 26572

* Background information regarding the questions from the ABAC are set out in Annex A, ABAC for Trade and Investment Facilitation, Issues and Requests Relating to Foreign Trade and Investment – PERU.

Chapter 5. Standards and Conformance

Q36. (ABAC) It is requested that GOP establishes the legislative system. *

Q37. (ABAC) It is requested that GOP postpones the legislative enforcement pending completion of the preparation for the application.*

Q38. Peru has indicated that 42.6% of its technical standards conform to international standards and that most of the others (82%) are adopted from well-known standards associations. Based on this statement, we understand that 57.4% of Peru's technical standards do not conform to international standards. In connection with this statement,

(i) Could Peru please confirm whether the reference to 82% is intended to indicate that 82% of the standards that do not conform to international standards are based on other well-known standards? If not, could Peru please explain the significance of 82% in this sentence?

Yes, 82% of the standards that do not conform to international standards (130 standards) are adoptions from well-known standards (American Standards Testing Materials-ASTM, Association of Official Analytical Chemist - AOAC, Technical Association of the Pulp and Paper Industry - TAPI, American Water Works - AWWA, National Fire Protection Agency – NFPA, etc.). If we consider the total number of Peruvian standards approved from August 2005 to December 2006, the distribution is:

118 (42.6%) of PTS are adoptions that conform to International Standards
130 (46.9%) of PTS are adoptions from well-known standards
29 (10.5%) of PTS are developed without international or well-known standards

(ii) Could Peru please explain the basis for any of its standards that do not conform to international standards or to well-known standards?

There are 29 PTS (10.5%) that are developed from National Standards from different countries (UNE - Spain, IRAM - Argentina, ICONTEC - Colombia, ABNT - Brazil, etc..) or from validated scientific research.

(iii) Could Peru please advise whether any of its standards exceed existing standards to establish a greater degree of protection in Peru? If Peru maintains such standards, could it please explain why these standards were adopted?

In the cases when PTS do not conform to international rules, it is generally because they do not exist for the particular products (given their regional origin).

It is important to note that Peruvian Technical Regulations are in most cases based on international standards.

Q39. Peru has indicated that by the end of 2007 it expects to approve 200 Peruvian Technical Standards, of which 25% will be based on international standards. Could Peru please explain the basis for the remaining 75% of the standards that are expected to be approved?

While 25% PTS will be based on international standards, 61.2% are expected to be adoptions from well-known standards and 13.8% of PTS will not conform to international nor well-known standards.

Q40. Peru has indicated that in 2007 INDECOPI will promote the use of APEC Guidelines for the Preparation, Adoption and Approval of Technical Regulations, APEC Information Notes on Good Practice for Technical Regulations and APEC Principles and Features of Good Practice for Technical Regulations. Could Peru please outline the steps the INDECOPI will take to promote the use of these guidelines, information notes and principles?

INDECOPI plans to engage an International consultant to identify the needs and expectations of the different bodies that issue technical regulations, to provide technical assistance and to prepare a proposal on Good Practices for Technical Regulations.

Q41. Could Peru please provide a copy of the Sanitary Measures Agreement that it concluded with the People's Republic of China in December 2002?

Q42. Could Peru please provide a copy of the Memorandum of Understanding regarding sanitary measures concluded with New Zealand in 2004?

Q43. Are Peru's technical standards applied on a National Treatment and MFN treatment basis?

Q44. Peru has indicated that INDECOPI presented a bill proposal concerning national standardization, accreditation and metrology systems that would establish a legal and infrastructure framework in accordance with international standards. Could Peru please advise the current status of the bill proposal, when and if the bill is expected to take effect and outline the legal and infrastructure framework that is expected to result from this bill?

INDECOPI plans to engage an International consultant to strengthen, consolidate and validate a legislative proposal for a National Quality Management System. The consultant will implement discussion forums with the involved sectors so he may consider their needs and expectations in the proposal.

Q45. (China) Have all the SPS measures been notified to the WTO by Peru? If not, please indicate why. Is the English version available for Peru's SPS measures?

Since 1996 Peru notifies all its SPS measures to the WTO, including proposals of regulations, emergency, and implemented measures. At the present all Peruvian SPS regulations are available at www.senasa.gob.pe (only in Spanish).

* Background information regarding the questions from the ABAC are set out in Annex A, ABAC for Trade and Investment Facilitation, Issues and Requests Relating to Foreign Trade and Investment – PERU.

Chapter 6. Customs Procedures

Q46. (Hong Kong, China) It is worthwhile to take note that Peruvian Customs Service (PCS) has started her single window program by signing agreements with other governmental agencies for system data interchange and that the implementation of a single window is supported by the enforcement of law. This single window approach for customs clearance should always be in full support by Customs Administrations, which will ultimately simplify governmental procedures, enhance Customs efficiency and facilitate trade and supply chain logistics. The relevant legislation will be a good reference in the study and implementation of this item.

SUNAT is a member of the Multisectoral Commission in charge of implementing and bringing into operation the Foreign Trade Single Window created by Supreme Decree N° 165-2006-EF. The Single Window will simplify foreign trade operator activities and integrate customs clearance processes, including:

- A single web access point for all authorization procedures of restricted goods in import and export.
- Avoid counterfeiting of documents and get a better control of goods.
- Simplification of procedures through integrated mechanisms of inter-institutional assistance of the State, so users are not required to submit all documentation twice (RENIEC and Public Registry formalities could be included so they can flow electronically in the State management's benefit without generate expenses to it).
- Joint payment platform, so state service payment can be carried out electronically through Foreign Trade Single Window and by using a private banking network.
- A single authorization application for restricted goods.
- Available 24 hours a day, from Monday to Sunday, from anywhere.

Peruvian Customs has signed agreements with some governmental entities such as: SENASA, PRODUCE, DIGESA, DIGEMID, MTC, INRENA y DISCAMEC. Until the date, there is interconnection with SENASA, PRODUCE, DIGESA y DIGEMID

Q47. (Japan) When does Peruvian Customs plan to adopt HS2007 Version?

Peruvian Customs adopted the Harmonized System 2007 on April 1, 2007, by Supreme Decree N° 017-2007-EF, modified by Supreme Decree N° 027-2007-EF.

- Is it possible to utilize Advance Classification Ruling System through the web?

The Advance tariff classification form can be seen or printed through the Customs Administration website. Also, classification rulings are published in the website and they have binding effects during goods clearance.

- Has Peruvian Customs examined the utility of AEO (Authorized Economic Operator)? If yes, is there a plan to adopt it?

Peruvian Customs has not evaluated the use of AEO (Authorized Economic Operator) yet.

- With regard to Revised Kyoto Convention, please describe the current situation adoption.

Peru has not adopted Revised Kyoto Convention yet, however, Peruvian legislation gets, to a large extent, rules of such Convention for development of its customs regulation just as for simplification and harmonization of customs processes.

- Is Peruvian Customs signatory to the WCO Customs Convention on the ATA Carnet for the temporary importation of goods?

We are not signatory of WCO Customs Convention on ATA Carnet, however, its evaluation is being planned.

Q48. Peru has indicated that it currently applies the Kyoto Convention. Will Peru seek to become a member of the Kyoto Convention?

As it is mentioned before, Peru has not signed Kyoto Convention.

Chapter 7. Intellectual Property Rights

Q49. (Chinese Taipei) In July 2003, the Peruvian Intellectual Property Office obtained ISO 9001: 2000 certification. We would like to ask the Office to explain how it prepared for such certification, and what the criteria and standards were for assessment.

In July 2000, INDECOPI obtained certification on ISO 9002: 1994. Three years later, in July 2003 we had to renew this certification. In that year the ISO 9002: 1994 was

no longer valid. So, INDECOPI renewed its certification with a new version of the ISO, this was the ISO 9001: 2000.

To get this certification INDECOPI implemented the following activities:

- Training its employees and internal auditors about the new requirements of ISO 9001: 2000
- Identification, design and implementation of the requirements of ISO 9001:2000.
- Internal audits that covered all the areas of the institution to evaluate the adequate implementation of the requirements of the new ISO standard.
- Preparation of the documents and activities in order to be ready for evaluation by the Certification Organization.

With regards to the criteria and standards which were assessed, the Certification Organization based its evaluation on the requirements set out by the ISO 9001: 2000 standard.

Q50. (Hong Kong, China) Are the four "supra regional courts specialized on intellectual property rights" responsible for both criminal prosecutions and civil litigations concerning IPR violations/disputes?

The four specialized courts are responsible only for criminal prosecutions on IPR crime offenses. There is a Court of Appeal specialized on IPR crime offenses for the review of resolutions of those four specialized courts. However, there is a chance for right holders to initiate civil action on IP matters on civil courts. It is possible and there are some statute provisions on that. There are no specialized civil courts on IP matters. However, last year specialized commercial civil courts have been established and therefore it is possible to obtain civil remedies on IP matters under those courts. There are no experiences on the use of civil remedies, given that right holders prefer to file administrative actions.

Q51. (Hong Kong, China) Since the introduction of increased penalties for intellectual property rights infringement, is there any sign of decrease in such illegal activities (piracy and counterfeiting), e.g. any significant drop in the number of cases and arrests?

After specialized courts were appointed (November 2006), a capacity building and training process has been initiated. INDECOPI has organized courses for the courts' staff. It is expected that results will be obtained after the cases which are under the jurisdiction of those new courts are resolved. However, there is a new positive attitude of judges towards piracy related cases. By the end of the year, some statistics could be provided.

Q52. (ABAC) It is requested that GOP establishes a legislative system and tightens its enforcement of intellectual property right related Acts and Regulations.*

The GOP has already established the laws and regulations related to the protection of intellectual property:

- Legislative Decree 25868 – Law of INDECOPI’s organization and functions
- Legislative Decree 822- Copyright Law
- Legislative Decree 823- Industrial Property Law (April 1996)
- Andean Community Decision 351- Common Provisions on Copyright and Neighbouring Rights.
- Andean Community Decision 291-Common Treatment of Foreign Capital and Trademarks, Patents, Licenses, y Privileges.
- Andean Community Decision 344 Common Protection of the rights of different Vegetable Varieties.
- Andean Community Decision 486- Common Regimen Concerning Industrial Property.

With regards to IPR enforcement the GOP complies with TRIPS. Add more, Officials of INDECOPI’s Intellectual Property Chamber, and the Trademark, Copyright and Patent Offices provide regular training on Intellectual Property Rights, including TRIPS implementation, to judges, public prosecutors and the national police.

The GOP has taken specific measures towards tightening IPR enforcement as may be observed by the increase in penalties for IPR infringement. In fact there is an effective time in prison for people infringing the IP Law. In addition, the IP legislation (Law 28571) for IP administrative sanctions was modified, changing the maximum fine sanction for administrative offences. Finally, in 2006 specialized IPR were established, among other actions which have been informed in the IAP

Q53. (ABAC) It is requested that GOP tightens its implementation of the Trademark Act, and Anti-monopoly Act.*

Peru requests that this question be reformulated; identifying more clearly which Acts is ABAC referring to.

- * Background information regarding the questions from the ABAC are set out in Annex A, ABAC for Trade and Investment Facilitation, Issues and Requests Relating to Foreign Trade and Investment – PERU.

Q54. (Hong Kong, China) We commend Peru's efforts in modernizing its GP regime in recent years. We also appreciate Peru's commitment to keep up the efforts in moving towards an open and non-discriminatory GP regime.

Peru appreciates Hong Kong's positive comments. Indeed, GOP is committed to continue improving its competition policy.

Chapter 9 Government Procurement

Q55. (Hong Kong, China) We commend Peru's efforts in modernizing its GP regime in recent years. We also appreciate Peru's commitment to keep up the efforts in moving towards an open and non-discriminatory GP regime.

Peru's thanks Hong Kong, China for its comments.

Q56. Peru has referred to the National Register of Suppliers. Could Peru please provide and explanation of the National Register of Suppliers that includes its objectives and operations, the range of suppliers that may be included in the National Register of Suppliers and any restrictions that may be imposed on any potential suppliers?

During 2005, Peru implemented the National Register of Suppliers for providers of goods and services, including public works, as the official suppliers's data base. This Register will be the base of electronic transactions that will take place in the near future, as well as the catalogue of goods and services and the catalogue of public entities. The National Register of Suppliers began its activity in June 2006, and the inscription can be made electronically, except for public works.

This Register requires suppliers to satisfy the following requirements for their inscription: legal ability, and in the case of construction services, including consulting services, also technical and economic ability. This will enable to manage a centralized source of information, which will include systematized data concerning to capacity ability and prior providers's performance with respect to trade relations with the public sector.

The only requirement to participate in a tendering procedure is to be registered in the National Provider's Register. Otherwise, it is prohibited by the Peruvian law that any public entity can establish an individual register system for contractual purposes.

The objective of this register is to simplify the requirements or other conditions of participation that suppliers would have been to comply in each tendering procedure, presenting them just once. That also means great savings for any potential supplier.

There is not restriction or limitation of any type to access to the register. Any registered provider under the National Provider's Register can be excluded or banned from participating in a tendering procedure only by an administrative resolution of CONSUCODE's Administrative Tribunal according to our procurement law.

- Q57. In response to the section "Open and Effective Competition", Peru notes that a registered supplier can only be excluded or banned from participating in a procurement through an administrative resolution of CONSUCODE's Administrative Tribunal. Could Peru please advise whether the Administrative Tribunal issues decisions to ban or exclude potential suppliers on the basis of guidelines or legislative requirements? Could Peru also please outline some of the reasons that the Administrative Tribunal may rely on as the basis for a decision to exclude or ban a potential supplier from a procurement?**

CONSUCODE's Administrative Tribunal can only ban or exclude potential suppliers according to the requirements established in Article 294° of the Supreme Decree N° 084-2004-PCM of the procurement law. Among some of the circumstances established in the law, we can mention the cases when suppliers present false declarations or participate in restricted practices in prejudice of fair competition.

- Q58. In response to the section "Accountability and Due Process", Peru notes the time limits for suppliers to invoke a review procedure. We understand that potential suppliers now have 10 calendar days to invoke a review procedure. Could Peru please explain when this period begins (ie., at what point should a potential supplier invoke a review procedure)?**

Each supplier has 10 calendar days to prepare and submit a challenge to CONSUCODE's Administrative Tribunal. A complaining supplier must invoke breaches to the procurement law that involves obligations that affect a tendering procedure by the time they know or must have had known the respective facts that will be the base of the alleged breaches of the procurement law.

- Q59. Peru has referred to a 20% bonus for goods and services produced in Peru. Could Peru please explain how this bonus is applied in a procurement process?**

There exists a 20% bonus for goods and services produced in Peru, given to the total technical and economic valuation of the proposal. To that respect, Supreme Decree N° 003-2001-PCM defines what rules must be applicable in order to determine when a good or service is consider produced or not in the territory. Suppliers must also present a self declaration or affidavit indicating if they are presenting a tendering incorporating Peruvian goods or services with the purpose to receive the 20% bonus. This bonus is applicable over the total score obtained in a tendering procedure.

In the case that Peru negotiates Free Trade Agreements (FTA) that include a Government Procurement Chapter, because of the application of the national treatment obligation, Peru will give the 20% bonus to its respective counterpart

automatically without the requirement of the use of goods and services produced in Peru.

Q60. Peru has made a number of significant changes to its government procurement regulatory system and procedures. Could Peru please describe whether and how these changes have opened government procurement? For example, has there been an increase in participation in government procurement? If there has been an increase, has there been an increase in participation by suppliers from outside Peru? Has there been an economic benefit to Peru in terms of reduced procurement costs or procurement savings related to an increase in competition? Peru has indicated an increase in the number of courtrooms to consider procurement complaints. Has there been an actual increase in the number of requests for procurement reviews?

Since year 2004, the Peruvian Government established that all public entities at all level of government, including public enterprises, must use the Electronic Government Procurement System (SEACE) www.seace.gob.pe. This web site constitutes a single entry point for the purpose of enabling suppliers to access information on procurement opportunities in the whole country.

Since year 2005, all public entities ought to publish the entire tendering information in this electronic system. To that respect, SEACE constitutes the only official mean to make these publications, containing information such as: notices of intended procurement and invitations to tender, tender documentation, including technical specifications and evaluation criteria, awarding of contracts, annual procurement plans, business opportunities and statistic information. This database is of public access and provides information about prices and conditions for participation in a tendering procedure, which can be used as a reference for future contracts.

CONSUCODE has developed a free service to interested suppliers in order to receive electronically, automatic notifications of relevant procurement information.

The use of electronic means for the publication of the tendering and other relevant information has generated great savings to the government. During year 2006, Peru's government saved more than US\$ 20 million.

At this same time, any potential supplier can have access to web sites mentioned before anytime, anywhere without any cost to get information concerning to the notice of intended procurement, the tender documentation, every entity's annual procurement plan and so on.

In year 2003, 30,000 suppliers were participating in tendering procedures in Peru. In year 2006, there were 70,000. Thanks to the electronic system, there is more participation from foreign suppliers: 487 this year, comparing with the 315 counted last year.

Reverse auction and framework agreements have also generated a lot of savings to the governments. Time limits of those tendering procedures are shorter and for that reason are more useful for public entities.

There has not been an increase in the number of requests for procurement reviews. What happens is that since year 2006, challenges are resolved exclusively by the CONSUCODE's Administrative Tribunal and not by the procuring entities as it used to be before.

Chapter 10. Deregulation/Regulatory Review

- Q61. (ABAC) It is requested that GOP reduces the severance fees and discharge fees to a more reasonable level through legislative revisions.*
- Q62. (ABAC) It is requested that GOP to accept layoff of low-production workers under specific conditions (ex. payment of premium allowance).*
- Q63. (ABAC) There is many excessive court decision in terms of labor protection.*
- Q64. (ABAC) It is requested that GOP reviews the emission control regulation so that it conforms to the fuel characteristics available in the market or takes steps for improvement of the poor quality fuels. Review of the regulation appears to be a more practical solution.*
- Q65. (ABAC) It is requested that GOP repeals the system for distribution of dividend to workers.*

The labor legislation of Peru is based on the labor provisions contained in the Constitution. These provisions are related to different issues, including the right to work, remunerations, protection against arbitrary lay off, collective rights, etc.

Regarding severance and discharge fees, in the Peruvian case they may be higher than the average of Latin-American economies. In this context, GOP is interested in taking this into consideration at the time it makes labor reforms.

The Peruvian legislation in the matter of layoff contemplates the possibility of the layoff by objective causes and real causes. Within the real causes, the layoff can be for worker capacity that involves the concept of layoff by deficient yield of the worker. In that sense, the Peruvian legislation already includes this type of layoff.

At this moment there are no intentions to countermand the system of distribution of dividends to workers, nevertheless if an interest exists to modify it in order that this system responds to productivity criteria.

- Q66. For most sections of this Questionnaire, Peru has not filled in the "Improvements Implemented Since Last IAP" field and the "Further Improvements Planned" field?

Does Peru consider that it has achieved its BOGOR goals and requires no further improvements? If not, could Peru provide a response in these fields?

Because of an involuntary omission, improvements were included in the “Current Regulatory Review Policies” and “Cumulative improvements implemented to date” fields. Therefore, information on actions taken from 2005 would be the improvements implemented since last IAP. The information reported was the following:

Section: General Policy Position, including Implementation of APEC Leaders’ Transparency Standards on Regulatory Reform

- In 2005, The Peruvian Government established that all regulatory agencies must implement transparency measures, and disclosure mechanisms with Decree Supreme N° 042-2005-PCM.
- Additionally, in accordance to TBT agreement, the Ministry of Economy and Finance enacted the Decree Supreme N° 149-2005-EF which encourages all agencies to implement transparency mechanisms for all technical regulations (standard and conformity measures).
- In the same year, Ministry of Health implemented a transparency and quality mechanism for all health regulations that it will implement. (Ministerial Resolution N° 826-2005-MINSA).
- In 2006, Ministry of Economy and Finance enacted the Ministerial Resolution N° 639-2006-EF/67, that implement a quality control and transparency mechanism for all regulation will going implement by this Ministry.

Section: Identification and Review of Proposed Regulations

- In 2005, the Ministerial Resolution N° 826-2005-MINSA implemented a quality control mechanism for all technical regulation produced by Ministry of Health.
- In 2006, Ministry of Economy and Finance implemented a more extensive quality control and transparency mechanism for all regulations produced by this Ministry.

Section: Reform of Industry/Sector Specific Regulation

- In June 2006, the Peruvian Government granted a 30-year concession for the design, construction, financing, operation and maintenance of the new containers terminal located by the South Breakwater at the Callao Port.

With regards to further improvements:

During 2006 INDECOPI worked towards regaining its full faculties related to the elimination of illegal or irrational bureaucratic barriers imposed by public institutions, through its Market Access Commission (CAM). However, the results were achieved

in the present year, which will be informed in our next IAP in the field “Improvements Implemented Since Last IAP” of the section regarding General Policy Position, including Implementation of APEC Leaders’ Transparency Standards on Regulatory Reform, as stated below:

- On February 5th, 2007, the Government enacted Law 28976, which regulated the requirements local governments can request from agents in order to obtain an operation license.
- On April 4th, 2007, the Government enacted Law 28996, Law that eliminates overcosts, barriers and restrictions to private investment. This law reinforced the Market Access Commission’s faculties to eliminate illegal or irrational bureaucratic barriers imposed by public institutions through Supreme Decree’s, Ministerial Decree’s or Local or Regional Ordinance’s. However, Law 28996 also states that when a bureaucratic barrier is detected in a procedure initiated “ex officio”, INDECOPI must (i) file a people’s action when the bureaucratic barrier is contained in a Supreme Decree or (ii) request the Ombudsman’s Office to file a claim of unconstitutionality, when the bureaucratic barrier is contained in a Local or Regional Ordinance; in order to obtain the elimination or modification of the bureaucratic barrier.
- Law 29060, published on July 7th 2007, established that administrative procedures must be subject to positive silence. Only in exceptional cases where public interest is involved, negative administrative silence can be applied.

Additionally at the moment, the Peruvian Government continues with the implementation of an ex-ante regulatory quality control mechanism. This will serve as a platform to launch regulatory improvement and reductions programs in all the sectors. In this context, making compromises to implement improvements will be difficult because all resources has used in the implementation of quality control mechanism.

Q67. How long will it take for Peru to fully implement the ex-ante regulatory quality control mechanism introduced in 2005?

The implementation of ex-ante regulatory quality control mechanism has been planned to finalize in 2008 or 2009.

* Background information regarding the questions from the ABAC are set out in Annex A, ABAC for Trade and Investment Facilitation, Issues and Requests Relating to Foreign Trade and Investment – PERU.

Q68. has not provided a response to the questions “WTO Ministerial Decisions and Declarations” and “Voluntary Action to accelerate Implementation of the WTO Agreement”. Are these questions applicable to Peru? If so, could Peru please respond to these questions?

Peru's Approach to Implementation of WTO Obligations (inc ROOs) in 2007			
Section	<i>Obligations Implemented Since Last IAP</i>	<i>Current Status of WTO Obligations Implementation</i>	<i>Further Implementation Planned</i>
<i>WTO Ministerial Decisions and Declarations</i>	As a fashion to demonstrate its commitment with WTO Ministerial Decisions and Declarations, Peru collaborated with the WTO and the IADB in the organization of a high-level dialogue entitled "Mobilizing Aid for Trade: Focus Latin America and the Caribbean", which took place in Lima, Peru, in 13-14 September 2007.	<p>Peru has a firm commitment with the Multilateral Trading System, which is reflected in its active participation both in the technical committees responsible for overseeing and supervising the implementation of the Uruguay Round agreements and in the Doha Development Round negotiations.</p> <p>Peru participates actively in the WTO Committee on Sanitary and Phytosanitary Measures, where there have been far-reaching discussions on matters of relevance to Peru's exports.</p> <p>Moreover, Peru has positively capitalized on the advantages afforded to a developing country by the WTO Dispute Settlement System.</p>	<p>Peru will continue to participate actively in the work of the WTO including that specifically directed by Ministerial Decisions and Declarations.</p> <p>In 17 and 19 October 2007, Peru's trade and related policies will be examined and evaluated at the Third Trade Policy Review.</p> <p>One of the main issues that Peru will promote, as host of the 2008 APEC's meetings, will be the support to the Multilateral Trading System and the initiatives of work related to the Doha Development Agenda.</p>
<i>Voluntary action to accelerate implementation of WTO Agreement</i>	There is no improvement since last IAP.	Since Peru has fully incorporated WTO Agreements to its legal framework, there is no voluntary action to accelerate its implementation.	There are no further improvements planned

Chapter 12. Dispute Mediation

Q69. (Hong Kong, China) The information relating to government-to-government disputes is considered factual, clear and in order. Peru has been utilizing the WTO dispute settlement (DS) procedures to resolve trade disputes between governments. As Peru has entered into various FTAs, the settlement of disputes between governments would also be referred to the dispute mediation procedures set out in respective FTAs. The future improvements planned in the 2007 IAP are also found in order.

For more clarification, in all the Dispute Settlement Chapters of the FTAs that Peru has negotiated, a provision of Choice of Forum, has been included.

This provision establishes that if a Dispute regarding the same matter arising under a FTA or the WTO Agreement may be settled in either forum at the discretion of the complaining Party. Unless otherwise agreed by the disputing Parties, once the complaining Party has requested a WTO panel under Article 6 of the WTO Dispute Settlement Understanding or a panel under a FTA, the forum selected shall be used to the exclusion of the other in respect of that matter.

Q70. Peru has indicated that, pursuant to the Out of Court Conciliation Law, out of court conciliation is applicable to most issues, including trade, but contains exemptions for others including “non-disposable rights”. Could Peru please explain “non-disposable rights” and the degree, if any, to which “non-disposable rights” could apply to trade?

According to Supreme Decree N° 004-2005, the Conciliation Regulation, disposable rights have a patrimonial nature. It means that they have an economic value. In addition, disposable rights are also which can be object of free availability, even if they aren't patrimonial rights.

Moreover, according to Law 26572, General Arbitration Law, the non-disposable rights are the followings:

- a. Rights relating to State or the person's civil capacity, rights of the incapacities' goods without the prior judicial authorization.
- b. Those over which there is a firm judicial resolution, unless the patrimonial consequences originated in its implementation, concerns the Disputing Parties exclusively.
- c. Those which are relevant to the public order or concern to crime or fault. Nevertheless, it may arbitrate about the civil liability's compensation, when it hadn't been fixed in a final judicial resolution.
- d. Rights related to the exclusive attributions or roles of the State, or person or entities of public law.

According to Peruvian legislation, trade matters are disposable rights, so it is possible to request an Extra Judicial Conciliation procedure in all these matters.

Q71. In the section “Improvements to in Peru’s Approach to Dispute Mediation since 1996”, Peru indicates that, since 2001, conciliation is a compulsory requirement before legal action can be initiated.

- (i) Can Peru please describe the steps in a typical conciliation process and the typical schedule for a conciliation process?

According to Conciliation Law and Regulation, the phases on a typical Conciliation Procedure are the followings:

- i. Conciliation Request: It can be in a writing or oral submission in front of the Conciliation Center.
 - ii. Conciliator Designation: The authorized Conciliation Center shall designate a Conciliator within 24 hours of the moment of delivering the request for Conciliation.
 - iii. Notification of the Invitation: the authorized Conciliation Center shall deliver to the requested Party an invitation for Conciliation.
 - iv. Conciliation Hearing: in this session the Parties can make their oral submissions and try to find a solution.
 - v. Conciliation Act: is the document where the Parties express the partial or complete solution for the dispute.
 - vi. Implementation: any Party can request to a Judicial Court the implementation of the Conciliation Act.
- (ii) Peru’s response indicates that compulsory conciliation applies in cases between private parties and between governments. Could Peru please advise whether compulsory conciliation is a necessary step in state to state dispute settlement and, if so, how this step would apply in a dispute between governments?

As mentioned in the section disputes between governments in writing IAP, Peru can settle a trade dispute with another government in the following frameworks: WTO Dispute Settlement Understanding, Andean Community Dispute Settlement System and Free Trade Agreement Dispute Settlement Mechanism. Therefore, there isn’t a compulsory conciliation in disputes between governments.

For more explanation, the scopes of application of the Conciliation legislation are the following: i) disputes between private parties or ii) dispute between Peruvian State and a Private Party. Therefore, the Conciliation Legislation doesn’t apply to disputes between governments.

In addition, according to the Conciliation Regulation, when the Peruvian State is one of the Parties, the conciliation procedure is optional.

Chapter 13 Mobility of Business People

Q72. Would you please let us know when the Law of Migrations is expected to be approved? What are background and new goals for the Law? What effects will the Law have on the mobility of business people?

The Law of Migrations is being evaluated by the team of advisers of the Ministry of Interior and some government officials of this institution. Peru can not inform in detail about the content of this Law because it is classified and it can only be known by a small group of government officials.

However, this group of advisers has informed us that this Law will improve the movement of business persons in Peru.

Chapter 14 APEC Food System

Q73. Will the Peruvian government have any new initiatives to reduce bound tariffs of agricultural goods in the Doha Round trade negotiation? Also please provide the details of Band Price System for some agricultural items mentioned in 2007 IAP.

Peru believes that the draft modalities text for agriculture submitted by the Chair is a solid base for reassuming the negotiations. In this draft, Peru supports the proposal to reduce bound tariffs of agricultural goods. Also, Peru considers that Doha Round shall assure the fullest liberalization of trade in tropical and diversification products.

With regard to the price band scheme, tariffs are determined according to the position of each product's price on an international reference market in relation to the "band", composed of "floor" and "ceiling" prices determined on the basis of previous prices. When the price on the international reference market is below the floor price, a tariff surcharge is imposed. When the price on the international reference market rises above the ceiling price, a tariff reduction is applied. Lastly, if the reference price is between the ceiling and floor prices, the corresponding tariff rate applies.

Chapter 15 Transparency

Chapter 17. Trade Facilitation

Q74. The Shanghai Accord states that APEC Economic Leaders committed to implement the Trade Facilitation Principles with a view to reducing the transaction costs in the region by 5% by 2006. While it is clear that Peru has made trade facilitation changes with respect to customs and mobility of business people etc... it is not clear whether transaction costs have been reduced.

(i) How far has Peru gone in reducing its transaction costs to committed levels?

In recent years, Peruvian Customs has been developing and implementing several mechanisms with the intensive use of information technology which allows the simplification and facilitation of procedures in customs clearance by doing without documents, and reduce transaction cost and time. We have the following mechanisms:

1. Electronic clearance and virtual services, 100% customs services are carried out electronically and the Portal is the main instrument of foreign trade operator.
2. Electronic Services Network is comprised by products for electronic integration with foreign trade operators.
3. Teleclearance WEB, use of internet, is addressed to Customs Agency Systems, and seek reducing time and operation costs.
Reduce time in customs clearance of goods allowing the expert to expedite the consultation through this new module and thus accelerating the diligence process.
Allow to standardize in a single module all system applications referred to customs clearance.
4. Communication Networks, communications system that connects electronically all administration departments and interconnects to foreign trade operators.
5. Electronic notices and WAP consultations through notices and notifications to cell phone and mail, which allow an information exchange immediately. Ensure transparency in the process, provide for support the foreign trade operator management.
6. Electronic payment, there is a interconnected banking network. Integration for electronic payment is through teleclearance. There are several ways of payment with secure transactions.
7. Electronic confirmation, in the main storage terminals customs clearer and expert address directly to the bonded warehouse to carry out physical examination of goods. It is not necessary to go Customs for presenting DUA and other supportive documents.
8. Electronic modification allows foreign trade operator to modify electronically the mistakes in declarations, provide information through consultations in the website about electronic modification.
Minimize time of authorization procedure management for user.
Minimize clearance time as long as DUA has been validated automatically with the corresponding authorizing documents.
Minimize risks and designation of red and orange channels for controlled goods.
9. Mobile computing, goods exit and entry control, web procedures, performance and information registry in real time, efficiency and expedite in service.
10. Interconnection with other entities such SENASA, PRODUCE that allow to simplify customs procedures minimizing risks on controlled goods.

(ii) How much work does Peru have left in order to attain the APEC goal?

In recent years, SUNAT has incorporated in its work plan mechanisms to facilitate and simplify trade, so SUNAT has considered to include in its SUNAT Institutional Strategic Plan, 2007-2011, approved by Resolution of Superintendence N° 123-2007/SUNAT, international trade facilitation, reducing clearance costs and time, for which the New Model of Foreign Trade has been developed including clearance program in the framework of bilateral and multilateral trade agreements, Asia-Pacific Economic Cooperation – Peru APEC 2008 and the necessary initiatives to prepare Customs before challenges which means the gradual tariff deduction and other domestic trade policy effects.

It is worth to mention that the following is comprised in Clearance Program in the framework of trade agreements:

- Reduction of clearance time 48 hours, as far as possible.
- Interconnection with other state entities as a previous phase to foreign trade single window.
- Technology incorporation to processes for improving control, reducing needs of a physical control.

Annex A

**ABAC for Trade and Investment Facilitation
Issues and requests relating to foreign trade and investment – PERU**

	Category	No	Issue	Issue Details	Requests	Governing Laws
1	Tariffs	(1)	Obligation to pay the added value tax (IGV) upon import customs clearance	Upon import customs clearance, the IGV of 19% is levied and collected. Importers are burdened financially for interests and other incidental expenses that correspond to advance payment.	It is requested that GOP repeals the payment obligation of the IGV upon import customs clearance.	
				(Actions) - To tighten control on collection of taxes, the Tax Bureau has been collecting IGV of 12% from Sellers and 6% from Buyers, while it has put into operation the computer correlation system. - On 1 August 2003, IGV has been raised to 19% from the ongoing 18%.		
				(Improvement) - In August 2003, IGV of 19% has been repealed on commission accrued on the import brokerage received from foreign exporters for imported goods.		
		(2)	Unfair levy of tax on new car/ altered used car	The luxury tax of 10% is imposed on the new cars, while zero tax applies to the altered used cars.	It is requested that GOP improves the unfairness in the tax levy between new cars and altered used cars.	SD No.843 (of 29 October 1996) on Licensing of Used Cars, Altering and Tariffs, etc. - SD No.16-96-MTC (of 10 November 1996)
				(3)		
2	Non-tariff measures	(1)	Complex and unfair export draw back system	Upon export of finished products from Peru, the 5% duty drawback on the FOB price of the finished products is granted: 1) if the value of the imported materials does not exceed 50% of the FOB price of the finished products, and 2) none of the imported parts enjoyed the preferential tariff benefit. This system was designed to promote export and encourage the industry by the drawback of duty paid upon import of materials. However, in reality, this objective has not been attained. For example, while the drawback of 5% is granted where less than 1% of the materials is imported, the drawback is not granted where nearly 50% of the materials were imports which however included a fraction of a percent of preferentially imported materials. Furthermore, the obligation to provide the proof of non-use of preferential materials is extremely burdensome and time consuming, since evidential documents must be provided to the authority in concern on locally procured materials. In this context, evidential proof is required at EACH LEVEL OF TRANSACTIONS from the importer to the final purchaser.	It is requested that the authority reviews the conditions to apply the drawback.	Decreto Supremo No.104-95-EF

Category	No	Issue	Issue Details	Requests	Governing Laws
			<p>(Actions)</p> <ul style="list-style-type: none"> In November 2002, GOP amended the "Export Drawback" to the system so that up to the cap of US\$20 million, the tariff payable in the amount equivalent to 5% of the FOB value of the goods is refunded, where the tariff amount imposed on the imported raw materials used for the manufacturing of the goods in concern is not more than 50% of the FOB value of the export in concern (exclusive of commissions and charges) per item/per enterprise in the context of export of capital goods. <p>(Improvement)</p> <ul style="list-style-type: none"> On June 12, 2004, Ministry of Economy and Finance ("MEF") published its Supreme Decree (DS-077-2004-EF), which distinguishes the false declaration and the clerical error in filling the customs declaration formalities. Under the Supreme Decree, while the total repayment of the refund is required in the event of false declaration, a mere error in completing the declaration requires repayment of the amount equal to 10% of the refund. The Supreme Decree also authorizes filing of refund application on finished goods incorporating materials and parts imported under the preferential scheme by deducting the corresponding amount from the FOB value of the finished products. Furthermore, in December 2004, "The law on the method to adjust general tariff law violations" was promulgated to provide for the legal basis. 		
	(2)	Problems on altered used cars	Eradication of illegally altered, imported used cars with the right steering wheel and correction of unfair taxation system on altered used cars.	It is requested that GOP improves the unfair taxation system between the imported new cars and altered and used cars.	Decreto Supremo No.843 (of 29 October 1996) on Licensing and Altered Used Cars and Tariffs, etc. Decreto Supremo No.16-96-MTC (of 16 November 1996)
			<p>(Actions)</p> <ul style="list-style-type: none"> One of the conditions for importing used automotive vehicles is steering handle on the left at the production point. GOP imposes 12% Tariff, 19% value added tax ("IGV"), and 30% selective consumption tax ("ISC"= Selectivo al Consumo) on the used cars for which Import License is issued, provided however that, ISC is exempted where the goods are "altered" (from the right steering wheel to the left). Compared to this, on new cars, GOP imposes 12% or 7% tariff, 19% IGV and 10% or 0% of ISC. 		
	(4)	Import restriction on raw food materials	Cultivation of Peruvian food production industry is impeded because of import restriction or complicated import procedures in terms of procurement raw materials. This lead impediment for competitiveness of the food production industry against import of completed food products		
3	Investment	(1) Likely imposition of royalty on sales	Investors' desire to develop new copper mine is weakened by the introduction of Mining Royalty Act.	<ul style="list-style-type: none"> It is requested that GOP repeals the mining royalty (regalia minera), or maintains it at the minimal rate. It is requested that GOP repeals introduction of the mining royalty 	Mining Royalty Act (Ley de Regalia Minera No.28258 and No.28323)
			<p>(Actions)</p> <ul style="list-style-type: none"> Effective June 2004, GOP imposes the mining royalty at three levels in accordance with the total annual concentrate value, less than 60 million dollars at 1%, 60 million to 120 million at 2% and over 120 million at 3%, under the Mining Royalty Act (Ley de Regalia Minera). 		

Category	No	Issue	Issue Details	Requests	Governing Laws	
	(2)	Inadequate incentives for environmental protection measures	- GOP does not make available any tax incentive measure for a mining enterprise investing for improvement of environment and prevention of pollution in Andean Cordilleras for non-ferrous metals, unlike similar mining operations in other countries that enjoy tax benefits for such investment.	It is requested that GOP establishes a system that exempts tax on environment related investments (for preventing pollution). It is requested that GOP establishes a contribution fund (tax-free) for investment in environmental protection.		
4	Standards and Conformance	(1)	Flaws in specifications and standards	The preparatory works for various specifications and standards have been delayed and as a result, low quality gray market products flood the market.	It is requested that GOP establishes the legislative system	
		(2)	Standardizing transactions on tires, domestic and import	- GOP is due to establish transaction standards for tires, both domestic and import. However, the license application form is not yet harmonized. There is much ambiguity and confusion.	It is requested that GOP postpones the legislative enforcement, pending completion of the preparation for the application	
5	Intellectual Property	(1)	Inadequate system for intellectual property rights	- Because of the inadequate enforcement measures to protect intellectual property right, fake, poor quality peripheral products flood the market at low prices.	It is requested that GOP establishes a legislative system and tightens its enforcement of intellectual property right related Acts and Regulations.	
				(Actions) - In December 2005, the U.S.-Peru reached agreement on the FTA negotiation that includes intellectual property rights provisions. - The U.S. continues to include Peru on the "Watch List" under Special 301.		
		(Improvement) - GOP has overhauled its intellectual property rights related legislation compatible with WTO/TRIPS and WIPO.				
	(2)	Rampant spread of illicit goods	Due to the rampant spread of confusingly similar packaging and counterfeit products, legitimate enterprises are likely to sustain economic loss and damage to their brand names.	It is requested that GOP tightens its implementation of the Trademark Act, and Anti-monopoly Act	Foreign Exchange Act	
6	Deregulation/Regulatory Review	(1)	Inadequate transaction taxation system for deliverables	The taxation system on the deliverable transactions (forward dealings on metals) is inadequate. (It does not authorize deduction of the loss accrued by the risk hedge, but is made taxable.)		Income Tax Act
		(2)	Difficulty in terminating employment	The Labor Act overly protects workers requiring employers to pay a vast amount of severance fees and discharge fees. It is thus difficult to dismiss or discharge employees who have hardly any desire to work. For example, severance fees and discharge compensation fees for 9 months and 20 months respectively must be paid for a driver with 23 years of continued service.	It is requested that GOP reduces the severance fees and discharge fees to a more reasonable level through legislative revisions.	Labor Productivity and Competition Act (DS No.3-99-TR)

Category	No	Issue	Issue Details	Requests	Governing Laws
			<ul style="list-style-type: none"> - Labor protection is intensive and thus it is practically impossible to make layoff. 	<ul style="list-style-type: none"> - It is requested that GOP to accept layoff of low-productive workers under specific condition (ex. payment of premium allowance) - There is many excessive court decision in terms of labor protection. 	
			<p>(Actions)</p> <ul style="list-style-type: none"> - Discharge compensation for a discharge without “justifiable reason” was reduced to 1.5 months for each continued service year, up to 12 months maximum. - Act No. 27735 of 27 May 2002 compels employers to pay retirement bonus also for employees who leave employment on any date outside the Independent day in July and the Christmas holidays in December. 		
	(3)	The severity of the emission control	<ul style="list-style-type: none"> - The problem arises from the non-compatibility of the Peruvian emission control regulation and the chemical characteristics of the fuels available in the Peruvian market. While the Emission Control Regulation (Tiero Euro II) has been enforced since January 2003, no fuels compatible with the Regulation is available in the market. The mismatch of fuels results in restricting the available model variety of the finished car imports, namely, the mismatch between the fuels (with high sulfuric contents) and the severe emission control regulation. 	<ul style="list-style-type: none"> - It is requested that GOP reviews the emission control regulation so that it conforms to the fuel characteristics available in the market or takes steps for improvement of the poor quality fuels. Review of the regulation appears to be a more practical solution. 	<ul style="list-style-type: none"> - The legislative provisions on emission control Decreto Supremo No.047-2001-MTC (31 October, 2001) - Decreto Supremo No.002-2003-MTC (16 January 2001)
	(4)	Dividends payable to workforce	<ul style="list-style-type: none"> - The law obligates enterprises to deploy certain proportion of taxable profits for distribution to workers in the prescribed manner. This is oppressive to the operation of enterprises. Employers are of the view that employees’ remuneration should be prescribed in the context of salaries, wages, bonus, and fringe benefits, with the distribution of profits decided at the managerial discretion of the shareholders. The ongoing legislative provisions prescribing down to the distribution method of dividend do not come to grip with the current climate of the business management. 	<ul style="list-style-type: none"> - It is requested that GOP repeals the system for distribution of dividend to workers. 	<ul style="list-style-type: none"> - The legislative provisions prescribing the dividend rate and the distribution method to workers (Decreto Supremo No.009-98-Territory (6 August 1998) Decreto Legislativo No.892 (11 November 1996)
	(5)	The absence of legal stability	<ul style="list-style-type: none"> - In general, Peru lacks the legal stability (including without limitation, too frequent changes and amendments, diametrically opposed interpretations, absence of established regime for observance of laws). More specifically, the following areas are problematic: 1) Company Act, 2) Foreign Exchange Act, 3) Labor Act, and 4) Commerce Act: Accounting Standard. 		<ul style="list-style-type: none"> - General Labor Act
			<p>(Actions)</p> <ul style="list-style-type: none"> - GOP warrants for 10 years maximum on the investment laws and corporate income tax rate pursuant to the foreign and domestic investors’ agreement s with Bureau of Investment Promotion (PROINVERSION) in exchange for execution of certain investments. (“The system for “Agreement on the Stability of the Legal Systems” (Convenio de Estabilidad Juridica)) 		

C. Organizations and Officers Consulted

Ministry of Foreign Trade and Tourism (MINCETUR)

Vice Ministry of Foreign Trade

1. Ms. Victoria Elmore
2. Mr. Julio Chan
3. Ms. Vanessa Uchiyama
4. Mr. Diego Llosa
5. Mr. Fernando Cerna
6. Mr. Carlos Castro
7. Mr. Diego Urbina
8. Ms. Gloria Ramirez
9. Mr. Francisco Ruiz
10. Mr. Álvaro Gálvez
11. Ms. Sara Rosadio
12. Ms. Pamela Ugaz
13. Ms. Sandra Li
14. Mr. Jaime Dupuy
15. Ms. Mariella Amemiya
16. Mr. Waldy Bejarano
17. Ms. Melissa Talleri
18. Ms. Aimi Yamamura
19. Mr. Benjamín Chávez
20. Mr. Gerardo Meza
21. Mr. José Luis Cano
22. Mr. José Luis Castillo

Vice Ministry of Tourism

23. Ms. Tania Vargas
24. Ms. Marlene Villanueva
25. Ms. Vanessa Cabrera

Ministry of Foreign Affairs (RR.EE)

23. Mr. Luis Quesada
24. Mr. Alberto Gonzáles
25. Mr. Alfonso Paz Soldán
26. Mr. Javier Prado

Ministry of Economy and Finances (MEF)

27. Mr. Luis Monroy
28. Mr. Carlos Farfán
29. Mr. Andrés Medina
30. Mr. Javier Roca
31. Mr. Carlos Ramirez
32. Ms. Luzmila Zegarra

- 33. Mr. Alejandro Caballero
- 34. Mr. John Bayly

National Superintendence of Tax Administration (SUNAT)

- 35. Ms. Carmela Reynalte
- 36. Ms. Ana Rojas
- 37. Mr. Rafael Reaño

National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI)

- 38. Ms. Odette Herbozo
- 39. Ms. Graciela Ortiz
- 40. Ms. Sofía Ugaz
- 41. Ms. Rosa Cabello
- 42. Mr. Luigi Tassara
- 43. Mr. Sergio Rodríguez
- 44. Mr. Martín Moscoso
- 45. Mr. Miguel Sánchez
- 46. Ms. Margarita Trillo
- 47. Ms. Cecilia Matta

Ministry of Agriculture (MINAG)

- 48. Ms. Luz Puelles
- 49. Mr. César Romero
- 50. Ms. Paula Carrión
- 51. Ms. María Elena Rojas

Ministry of Energy and Mining (MINEM)

- 52. Ms. Alicia Polo
- 53. Mr. Orlando Chávez

Ministry of Production (PRODUCE)

- 54. Mr. Juan Carlos Zavala
- 55. Ms. Melissa Barandiarán
- 56. Mr. Javier Butrón

National Institute of Statistics and Information (INEI)

- 57. Ms. Marilu Cueto
- 58. Ms. Rosa Navarro

Private Investment Promotion Agency (PROINVERSION)

- 59. Mr. Carlos Herrera
- 60. Ms. Nancy Bojanich
- 61. Ms. Verónica Maseda

Supervisory Organization for Private Investment in Telecommunications

- 62. Ms. Lucía Villarán
- 63. Ms. María Egusquija
- 64. Mr. Jorge Bossio

National Institute of Natural Resources (INRENA)

- 65. Ms. Raquel Soto
- 66. Mr. Guillermo Avanzini
- 67. Ms. Erika Vizcarra
- 68. Ms. Verónica Sobrevilla
- 69. Ms. Luisa Ruiz
- 70. Mr. Pedro Belber

Ministry of Interior (MININTER)

- 71. Mr. Rodolfo Ortiz

General Directorate of Control of Security Services, Control Arms, Ammunition and Explosives Civilian Use (DICSCAMEC)

- 72. Ms. María Teresa Manrique

National Service of Animal and Plant Health (SENASA)

- 73. Ms. Dora Pariona
- 74. Mr. Jorge Hurtado

Technological Institute of Fishing (ITP)

- 75. Mr. Walter Aquino

Ministry of Health, National Directorate of Environmental Health (MINSA)

- 76. Ms. Paula Ramirez

Directorate General of Immigration and Naturalization (DIGEMIN)

- 77. Ms. Rina Córdova
- 78. Ms. Soledad Canaza
- 79. Mr. Martín Zamora
- 80. Mr. Juan Morante

Ministry of Labour and Employment Development (MINTRA)

- 81. Ms. Diana Santander
- 82. Mr. Juan Navarro

Superior Council of Procurement (CONSUCODE)

- 83. Mr. Mario Arteaga

Ministry of Education (MINEDU)

- 84. Ms. Andrea Harman

- 85. Mr. Eduardo Rezkalah
- 86. Ms. Gisela Urday

National Assembly of Rectors (ANR)

- 87. Mr. Nicanor Colonia

Peruvian Nurses Association (CEP)

- 88. Ms. Elida Bravo

Peruvian Architects Association (CAP)

- 89. Ms. Janet Nalvarte

Lima Public Accountants Association (CCPL)

- 90. Mr. Segundo Aliaga

Ministry of Housing, Construction and Sanitation (VIVIENDA)

- 91. Ms. Julia Velásquez
- 92. Mr. José Ibáñez
- 93. Mr. Carlos Carbajal

Supervisory Organism of Investment in Energy and Mining (OSINERGMIN)

- 94. Mr. Raúl Perez-Reyes

National Supervisory Commission of Companies and Securities (CONASEV)

- 95. Mr. Mirko Zárate

Superintendency of Banking, Insurance and Private Pension Funds Administrators (SBS)

- 96. Ms. Úrsula Reategui
- 97. Ms. Lourdes Poma

National Environment Fund (FONAM)

- 98. Mr. Manuel García

Peruvian Sport Institute (IPD)

- 99. Mr. Ricardo Roque

National Institute of Culture (INC)

- 100. Ms. Mayra Nieto

Ministry of Transport and Telecommunications (MTC)

Vice Ministry of Telecommunications

- 101. Mr. Alberto Palma
- 102. Ms. Eugenia Mariño
- 103. Mr. Carlos Valdez

Vice Ministry of Transport

- 104. Ms. Gladys Villanueva
- 105. Mr. Jesús Tapia
- 106. Mr. Lauro Márquez
- 107. Ms. Pilar Iberico
- 108. Mr. Angel Bottino
- 109. Mr. Adrián Lazo
- 110. Ms. Adela Sánchez

Supervisory Organism of Investment in Transport (OSITRAN)

- 111. Ms. Christy García-Godos

National Supervisor of Sanitary Services (SUNASS)

- 112. Mr. Juan de la Cruz
- 113. Mr. Jorge Mendoza

National Environmental Council (CONAM)

- 114. Ms. Mónica Rosell