ANNEX A

EXECUTIVE SUMMARY OF PERU'S SUBMISSION

1 INTRODUCTION

1. On 31 August 2015, Peru informed the DSB that it intended to implement the DSB's recommendations and rulings in this dispute. Peru explained that it would not be possible to comply immediately and that it would need a reasonable period of time to bring its measures into conformity with the WTO Agreements.

2. Given that the Appellate Body's recommendation concerning the additional duties implies a significant change in Peruvian tariff policy, and that "particular circumstances" exist, an implementation period of at least 19 months constitutes a reasonable period of time for the implementation of the DSB's recommendations and rulings.

2 GENERAL CONSIDERATIONS REGARDING THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE PANEL AND THE APPELLATE BODY

2.1 The PRS is an essential element of Peru's economic policy

3. It is important to emphasize the level of integration of the PRS in Peru's agricultural and tariff policies since the creation of this system in 1991. In May 1991, Peru established specific duties under Supreme Decree No. 016-91-AG. During the Uruguay Round, Peru bound its tariffs for all products at 30%, with the exception of rice, sugar, dairy, maize and wheat – that is, the products subject to specific duties in existence since 1991 – which were bound at 68%.

4. It is not by chance that the measure encompassed the four categories of agricultural products that are still included today. These four product categories are very important to Peru, as they provide work for a large part of Peruvian society. The integral role of the PRS and the specific duties in the Peruvian system is currently very relevant for determining a reasonable period of time in the context of proceedings under Article 21.3(c) of the DSU.[1]

2.2 State of emergency in Peru requiring the concentration and prioritization of resources to address the El Niño phenomenon

5. Pursuant to a decision taken at the highest political level, the ministries involved in the implementation of the recommendations of the Panel and the Appellate Body are currently in the process of taking measures to prevent and mitigate the El Niño phenomenon. As a consequence, which constitutes unforeseeable circumstances not attributable to the country, the state of emergency will also have a considerable impact on the process of modifying the measure and implementing the recommendations of the Panel and the Appellate Body.

2.3 Legal nature of a Supreme Decree

6. Pursuant to Article 11 of Chapter II of the Executive Organic Law – Law No. 29158[2], Supreme Decrees are general enactments issued by the President of the Republic, which govern rules with the status of law or regulate functional sectoral or multisectoral activity at national level. Furthermore, pursuant to the Political Constitution of Peru, customs duties are regulated by the President of the Republic by Supreme Decree.

[1] Award of the Arbitrator, *Chile – Price Band System (Article 21.3(c))*, para. 48.
[2] Executive Organic Law No. 29158, PER-7.

3 ANALYTICAL FRAMEWORK FOR DETERMINING THE REASONABLE PERIOD OF TIME FOR IMPLEMENTATION OF THE APPELLATE BODY'S RECOMMENDATIONS

7. Taking into consideration the particular circumstances of the present case, which include the nature of the measure as an integral part of the country's economic policy and the current state of emergency requiring the prioritization of Government resources, set out below are details of the administrative procedure required to implement the recommendations of the Appellate Body and the Panel.

3.1 Consultation process with the production sectors concerned

8. Given that the implementation of the DSB's recommendations will have a negative impact on the staple goods-producing sectors concerned, it is essential to conduct a consultation process. The ministries responsible for formulating relevant programmes assess comments and hold coordination meetings to design the programmes concerned. On average, this process can take between 15 and 20 days, following which a further meeting is held with the production sectors. The total duration of these consultations is around 60 to 70 days.

3.2 Definition of the measure

9. The measure to implement the DSB's recommendations must be defined by the ministries responsible for issuing the Supreme Decree. Coordinated efforts are therefore required, involving not only the Ministries of the Economy and Finance (MEF), and of Agriculture and Irrigation, but other State sectors.

10. By Ministerial Resolution No. 639-2006-EF/67, the MEF approved the "Economic Analysis Manual", according to which the determination of a measure requires a preparatory meeting with all the units involved in the draft legislation.

11. To date, despite the efforts made, the competent ministries have been unable to agree on any proposed modification of the measure in order to match the DSB's recommendations to the PRS. A period of between six and nine months is therefore envisaged for the completion of this stage.

3.3 Preparation of the draft Supreme Decree

12. Once the measure has been determined and the consultation process with the sectors concerned has been concluded, the competent ministries formulate the draft Supreme Decree that will contain the description of the measure and the justification for its implementation. Under normal circumstances, the process of preparing and approving the draft measure can take 30 to 45 calendar days.

3.4 Vice-Ministerial Coordination Commission

13. Any draft Supreme Decree involving more than one sector must first be approved by the Vice-Ministerial Coordination Commission (CCV). Under normal circumstances, this approval process can take between 14 and 30 days, depending on the comments submitted and the time it takes to respond to them.

3.5 Council of Ministers

14. Once approved by the CCV, the draft legislation is placed on the agenda of the Council of Ministers, which must either approve the draft or return it for further amendment. Council of Ministers sessions are convened by the Secretariat of the Council of Ministers and are held on a weekly basis. The presence of the head of the proposing sector is necessary for the Council to give its approval. Under normal circumstances, this approval process can take, on average, between 7 and 14 days.

3.6 Ministerial endorsement, publication and entry into force

15. Once the draft text has been agreed and approved by the Council of Ministers, it is endorsed by the Minister of Agriculture and Irrigation and signed by the Minister of the Economy and Finance, for subsequent publication in the Official Journal, *El Peruano*. Under normal circumstances, this endorsement can take around seven days. The Supreme Decree will enter into force on the day following its publication, unless otherwise provided.

4 CONCLUSION

16. Peru requests the Arbitrator to determine that the reasonable period of time for the implementation of the Appellate Body's ruling be 19 months, starting from the date of approval of the report by the DSB and thus ending on 31 October 2016.

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