ANNEX B

EXECUTIVE SUMMARY OF GUATEMALA'S SUBMISSION

1 INTRODUCTION

1. The purpose of this arbitration is to determine the reasonable period of time that will be granted to Peru to comply with the recommendations and rulings adopted by the Dispute Settlement Body (DSB).

2. Peru requests 19 months as a reasonable period of time. The main reasons for this excessive length of time are the likely occurrence of the El Niño phenomenon and Peru's decision to design production sector support programmes to offset the allegedly negative effects of modifying the PRS.

3. Guatemala considers five months to be an amply sufficient and perfectly reasonable period of time for Peru to implement the DSB's recommendations and rulings, in accordance with its domestic legislation. Nevertheless, Guatemala would not object to a time-period of six months, if the Arbitrator were to decide to consider other factors in the determination of the reasonable period of time.

4. In the present case, Peru needs to implement the recommendations and rulings of the DSB through an administrative act (i.e. a Supreme Decree of the President of the Republic, endorsed by the Minister of the Economy and Finance and the Minister of Agriculture and Irrigation). While Peru has the discretion to decide how to implement these recommendations and rulings, its sole obligation is to stop collecting the additional duties resulting from the PRS. The modification of the PRS and the adoption of production sector support measures do not, therefore, form part of Peru's implementation obligations that would justify extending the reasonable period of time.

5. Furthermore, while Guatemala regrets Peru's vulnerability to natural phenomena, Peru has not, in this case, demonstrated that the El Niño phenomenon is a consideration that the Arbitrator should take into account for extending the reasonable period of time. On the contrary, the evidence shows that the Government of Peru continues to carry out its functions as normal and that the uncertain likelihood of the impact of the El Niño phenomenon has not at all impaired its regulatory capacity.

2 LEGAL STANDARD UNDER ARTICLE 21.3(C) OF THE DSU

6. In the present case, the Arbitrator should consider certain key principles of the case law under Article 21.3(c) of the DSU, such as the following: immediate compliance is the rule and the reasonable period of time only applies where immediate compliance is "impracticable"; the responding Member bears the burden of demonstrating that the reasonable period of time is the shortest period possible; the reasonable period of time is the shortest period possible within the domestic legal system; one of the "particular circumstances" that should be considered is that compliance via administrative means requires less time than compliance via legislative means; the reasonable period of time should only cover the time required to implement the DSB's recommendations and rulings (not to make other changes to legislation); the "contentiousness" or "political sensitivity" of the measure to be implemented is not a "particular circumstance[ ]" that is relevant for determining the reasonable period of time; and the fact that the responding Member has not yet commenced implementation of the DSB's recommendations and rulings is a factor that the arbitrator should take into account in determining the reasonable period of time.

3 FIVE MONTHS IS THE SHORTEST PERIOD OF TIME UNDER THE PERUVIAN LEGAL FRAMEWORK

7. The reasonable period of time proposed by Peru is excessively long, as Peru considers it to include the time required for designing, approving and implementing production sector support measures; Peru also claims that it does not have the human and financial resources necessary to

design the implementation measures, since such resources are channelled entirely towards addressing the state of emergency related to the El Niño phenomenon.

8. A time-period of five months is, however, perfectly reasonable for the following reasons:

a. The time required for establishing production sector support measures does not form part of the reasonable period of time. Peru's obligation is in fact to stop collecting the additional duties resulting from the PRS, and the support measures are not necessary for the implementation of the DSB's rulings and recommendations.

b. Furthermore, consultations with the production sectors concerned are not required under Peruvian legislation. In any event, such consultations may take place in parallel to or as part of the process of designing the measure, and Guatemala therefore considers three months to be amply sufficient. In some cases, the entire process of preparing, approving and publishing Supreme Decrees takes no more than 30 days.

c. Regarding the definition of the measure, the time required for interinstitutional coordination may be less than that indicated by Peru; in particular, because instead of requiring the coordination of two separate Government units, only one unit is responsible for preparing the draft legal instrument.

d. Guatemala does not dispute the minimum and maximum time-frames for the periods described by Peru for the preparation of the draft Supreme Decree, its analysis by the Vice-Ministerial Coordination Commission and the Council of Ministers, and ministerial approval, or for the publication and entry into force of the measure. The combined total of the minimum and single time-periods described by Peru does not exceed two months.

4 THE PRS IS NOT A MEASURE FUNDAMENTALLY INTEGRATED INTO TARIFF POLICY

9. Peru has been willing to abandon the PRS in free trade agreement negotiations and the system currently plays a limited role in Peru's agricultural policy. Statistics show that for some of the products covered, the PRS accounts for only a small proportion of imports and an even smaller percentage of domestic consumption. Furthermore, as explained by Peru, the PRS is not a tool for regulating prices in the Peruvian market.

5 THE EL NIÑO PHENOMENON IS NOT A VALID CONSIDERATION FOR EXTENDING THE REASONABLE PERIOD OF TIME

10. Peru's reasoning behind this argument is that the El Niño phenomenon will prevent it from focusing on the implementation of the DSB's recommendations and rulings, as its human and financial resources are channelled towards addressing an emergency situation.

11. However, while Peru may be able to predict the likely occurrence of the El Niño phenomenon, it cannot determine *a priori* the potential effects of the phenomenon in the future. A natural event that has not occurred cannot constitute "unforeseeable circumstances", and determining a reasonable period of time on this basis would be speculative.

12. Moreover, the facts show that Peru continues to carry out its normal regulatory activities, despite the existence of an Emergency Decree issued by the President of the Republic.

13. In addition, the Action Plan devised to address El Niño situations does not require urgent response actions from the officials responsible for the implementation of the DSB's rulings and recommendations.

14. In any case, the Arbitrator should not consider speculation concerning events that have not occurred to be relevant for granting additional time for the implementation of the DSB's recommendations and rulings. A reasonable period of time determined in this way, where such events do not occur, would not be the "shortest period" possible.

6 CONCLUSION

15. Five months is an amply sufficient and perfectly reasonable period of time for Peru to implement the DSB's recommendations and rulings. The determination of the reasonable period of time should not be influenced by the design of production sector support measures; speculation concerning potential effects of the El Niño phenomenon; or considerations such as how long the PRS has been in place or its level of integration in tariff policy.

16. If the El Niño phenomenon were to have devastating consequences in Peru, thereby affecting the country's regulatory capacity to the point of preventing it from complying with the DSB's recommendations and rulings within the reasonable period of time determined by the Arbitrator, Peru could inform the DSB of this situation in the context of its status reports on compliance pursuant to Article 21.6 of the DSU. Guatemala would give sympathetic consideration to this situation.

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