Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBURG,

HUNGARY,

MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty on European Union and the Treaty on the Functioning of the European Union, hereinafter referred to as the 'Member States of the European Union',

and

THE EUROPEAN UNION,

of the one part, and

THE REPUBLIC OF COLOMBIA (hereinafter referred to as 'Colombia'),

THE REPUBLIC OF PERU (hereinafter referred to as 'Peru')

and

THE REPUBLIC OF ECUADOR (hereinafter referred to as 'Ecuador'),

hereinafter also referred to as the 'signatory Andean Countries',

of the other part,

CONSIDERING the importance of the historical and cultural links and the special links of friendship and cooperation between the European Union and its Member States and the signatory Andean Countries, and their wish to promote the economic integration between the Parties;

DETERMINED to strengthen those links by building on the existing mechanisms that govern relations between the European Union and its Member States and the signatory Andean Countries;

REAFFIRMING their commitment to the United Nations Charter and the Universal Declaration of Human Rights;

CONTRIBUTING to the harmonious development and expansion of world and regional trade, and offering a catalyst for international cooperation;

DESIRING to promote comprehensive economic development with the objective of reducing poverty and creating new employment opportunities and improved working conditions, as well as raising living standards in their respective territories by liberalising and expanding trade and investment between their territories;

COMMITTED to implementing this Agreement in accordance with the objective of sustainable development, including, the promotion of economic progress, the respect for labour rights and the protection of the environment, in accordance with the international commitments adopted by the Parties;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the 'WTO Agreement');

DETERMINED to eliminate distortions to their reciprocal trade; and to prevent the creation of unnecessary obstacles to trade;

DETERMINED to establish clear and mutually advantageous rules governing their trade and to foster trade and investment between them, and to promote a regular dialogue among them on these issues;

DESIRING to promote the competitiveness of their companies in international markets by providing them with a predictable legal framework for their trade and investment relations;

CONSIDERING the difference in economic and social development between the signatory Andean Countries and the European Union and its Member States;

AFFIRMING their rights to use, to the greatest extent, the flexibilities provided for in the multilateral framework for the protection of public interest;

RECOGNISING that the signatory Andean Countries are members of the Andean Community, and that the Decision 598 of the Andean Community requires that when its Member Countries negotiate trade agreements with third countries, the Andean legal system is preserved in the reciprocal relations between the Andean Community Member Countries;

RECOGNISING the importance of the respective regional integration processes of the European Union, and of the signatory Andean Countries within the framework of the Andean Community,

HAVE AGREED AS FOLLOWS:

Title I. Initial Provisions

Chapter 1. Essential Elements

Article 1. General Principles

Respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, and for the principle of the rule of law, underpins the internal and international policies of the Parties. Respect for these principles constitutes an essential element of this Agreement.

Article 2. Disarmament and Non-proliferation of Weapons of Mass Destruction

1. The Parties consider that the proliferation of weapons of mass destruction and their means of delivery, both to States and non-state actors, represents one of the most serious threats to international stability and security.

2. Consequently, the Parties agree to cooperate and contribute to countering the proliferation of weapons of mass destruction and their means of delivery through full compliance with and national implementation of their existing obligations under agreements, treaties and other relevant international obligations on matters of disarmament and non-proliferation.

3. In cooperating to contribute to the objective of disarmament and non-proliferation of weapons of mass destruction, the Parties agree to work together to achieve the universalisation and implementation of the treaties on these matters.

4. The Parties agree that paragraphs 1 and 2 of this Article constitute an essential element of this Agreement.

Chapter 2. General Provisions

Article 3. Establishment of a Free Trade Area

The Parties hereby establish a free trade area, in conformity with Article XXIV of the General Agreement on Tariffs and Trade of 1994 (hereinafter referred to as "GATT 1994") and Article V of the General Agreement on Trade in Services (hereinafter referred to as "GATS").

Article 4. Objectives

The objectives of this Agreement are:

(a) progressive and gradual liberalisation of trade in goods, in conformity with Article XXIV of the GATT 1994;

(b) facilitation of trade in goods through, in particular, the application of the agreed provisions regarding customs and trade facilitation, standards, technical regulations and conformity assessment procedures and sanitary and phytosanitary measures;

(c) progressive liberalisation of trade in services, in conformity with Article V of the GATS;

(d) development of an environment conducive to an increase in investment flows and, in particular, to the improvement of the conditions of establishment between the Parties, on the basis of the principle of non-discrimination;

(e) facilitate trade and investment among the Parties through the liberalisation of current payments and capital movements related to direct investment;

(f) effective and reciprocal opening of government procurement markets of the Parties;

(g) adequate and effective protection of intellectual property rights, in accordance with international rules in force between the Parties, while ensuring a balance between the rights of intellectual property right holders and the public interest;

(h) conduct of economic activities, in particular those regarding the relations between the Parties, in conformity with the principle of free competition;

(i) establishment of an expeditious, effective and predictable dispute settlement mechanism;

(j) to promote international trade in a way that contributes to the objective of sustainable development, and to work in order

to integrate and reflect this objective in the Parties' trade relations; and

(k) to ensure that the cooperation for technical assistance and the strengthening of the trade capacities of the Parties contribute to the implementation of this Agreement and to the optimal utilization of the opportunities offered by it according to the existing legal and institutional framework.

Article 5. Relation to the WTO Agreement

The Parties reaffirm the existing rights and obligations between them under the WTO Agreement.

Article 6. Definition of the Parties

1. For the purposes of this Agreement:

- "Party" means the European Union or its Member States or the European Union and its Member States within their respective areas of competence as derived from the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as the "EU Party"), or each of the signatory Andean Countries;

- "Parties" means, on the one hand, the EU Party and, on the other hand, each signatory Andean Country.

2. When this Agreement provides for specific and individual commitments with respect to a Member State of the European Union or for a signatory Andean Country, this Agreement will refer to that specific country or countries as appropriate.

3. In accordance with Article 7, for the signatory Andean Countries the terms "another party" or "the other Parties" shall mean the EU Party, when such terms are used in this Agreement.

Article 7. Trade and Economic Relations Covered by this Agreement

1. The provisions of this Agreement apply to the bilateral trade and economic relations between, on the one part, each individual signatory Andean Country and on the other part, the EU Party; but not to the trade and economic relations between individual signatory Andean Countries (1).

2. The rights and obligations established by the Parties in this Agreement shall not affect to the rights and obligations between signatory Andean Countries as Member Countries of the Andean Community.

(1) This provision shall not be interpreted to the detriment of the obligations established between the signatory Andean Countries and the EU Party in Articles 10 and 105.

Article 8. Fulfilment of Obligations

1. Each Party is responsible for the observance of all provisions of this Agreement and shall take any necessary measure to implement the obligations under it, including its observance by central, regional or local governments and authorities, as well as non-governmental bodies in the exercise of governmental powers delegated to them by such governments and authorities (2).

2. If a Party considers that another Party has failed to fulfil its obligations under this Agreement, such Party shall exclusively have recourse to, and abide by, the dispute settlement mechanism established under Title XII (Dispute Settlement).

3. Without prejudice to the existing mechanisms for political dialogue between the Parties, any Party may immediately adopt appropriate measures in accordance with international law in case of violation by another Party of the essential elements referred to in Articles 1 and 2 of this Agreement. The latter Party may ask for an urgent meeting to be called to bring the Parties concerned together within 15 days for a thorough examination of the situation with a view to seeking an acceptable solution. The measures will be proportional to the violation. Priority will be given to those which least disturb the functioning of this Agreement. These measures shall be revoked as soon as the reasons for their adoption have ceased to exist.

(2) The Parties understand that ‘central, regional or local governments and authorities’ includes all authorities and governmental levels of the Parties.

Article 9. Geographical Scope of Application

1. This Agreement shall apply, on the one hand, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied under the conditions established in those Treaties, and on the other hand, to the territories of Colombia, Peru and Ecuador, respectively (3).

2. Notwithstanding paragraph 1, to the extent that the customs territory of the European Union (hereinafter referred to as the "EU customs territory") includes areas not covered by the preceding territorial definition, this Agreement shall also apply to the EU customs territory.

(3) For greater certainty the Parties hereby declare that the references to territory contained in this Agreement shall be understood exclusively for purposes of referring to its geographical scope of application.

Article 10. Regional Integration

1. The Parties recognise the importance of regional integration in furthering the economic and social development of the signatory Andean Countries and of the European Union, enabling to strengthen the relations between the Parties and to contribute to the objectives of this Agreement.

2. The Parties recognise and reaffirm the importance of the respective regional integration processes between the Member States of the European Union and between the Andean Community Member Countries as a mechanism to achieve greater trade opportunities and foster their effective integration into the global economy.

3. The Parties recognise that progress in Andean regional integration will be determined by the Andean Community Member Countries.

4. The Parties recognise that the signatory Andean Countries must preserve the Andean Legal System in the relations between them, in accordance with Decision 598 of the Andean Community.

5. Having regard to the aspiration of the Parties of achieving an association between the two regions, when all the Andean Community Member Countries become Parties to this Agreement, the Trade Committee will re-examine the relevant provisions, particularly this Article and Article 105, with a view to adapting them to the new situation and supporting regional integration processes.

Chapter 3. Definitions of General Application

Article 11. Definitions

For the purposes of this Agreement, unless otherwise specified:

- "days" means calendar days, including weekends and holidays;

- "good of a Party" or "product of a Party" means domestic products as these are understood in the GATT 1994 or such goods or products as the Parties may agree, and includes products or goods originating in that Party as defined in Article 19;

- "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;

- "measure" means any act or omission of a Party, including laws, regulations, procedures, decisions, administrative acts or practices, or any other form;

- "person" means a natural (4) or juridical person.

(4) In Ecuadorian law, a 'physical person' ('persona física') is referred to as a 'natural person' ('persona natural').

Title II. Institutional Provisions

Article 12. Trade Committee

1. The Parties hereby establish a Trade Committee. This Committee shall comprise representatives of the EU Party and representatives of each signatory Andean Country.

2. The Trade Committee shall meet at least once a year at the level of Ministers or the representatives that such level may designate. In addition, upon written request of a Party, the Trade Committee may meet at any time at the level of senior officials designated to take the necessary decisions.

3. The Trade Committee shall meet on a rotational basis, in Bogota, Brussels, Lima and Quito, unless the Parties agree otherwise. The Trade Committee shall be chaired by each Party for a period of one year, on a rotational basis.

4. Without prejudice to paragraph 1, the Trade Committee may meet in sessions where the EU Party and one signatory Andean Country participate, regarding matters which:

(a) relate exclusively to the bilateral relationship between the EU Party and such signatory Andean Country; or

(b) have been discussed in a session within a "specialised body" in which only the EU Party and one signatory Andean Country have participated, and that matter has been referred to the Trade Committee.

If another signatory Andean Country expresses interest in the matter to be discussed in such session, it may participate in the session subject to prior agreement of the EU Party and the signatory Andean Country concerned.

Article 13. Functions of the Trade Committee

1. The Trade Committee shall:

(a) supervise and facilitate the operation of this Agreement and the correct application of its provisions, and consider other ways to attain its general objectives;

(b) evaluate the results obtained from the application of this Agreement, in particular the evolution of the trade and economic relations between the Parties;

(c) supervise the work of all specialised bodies established under this Agreement and recommend any necessary action;

(d) evaluate and adopt decisions as envisaged in this Agreement regarding any subject matter which is referred to it by the specialised bodies established according to this Agreement;

(e) oversee the application of Article 105;

(f) supervise the further development of this Agreement;

(g) without prejudice to the rights conferred in Title XII (Dispute Settlement) and other provisions of this Agreement, explore the most appropriate way to prevent or solve any difficulty that may arise in relation to issues covered by this Agreement;

(h) adopt, at its first meeting, the Rules of Procedure and the Code of Conduct for arbitrators referred to in Article 315;

(i) establish the remuneration and expenses to be paid to arbitrators;

(j) adopt its own rules of procedure, as well as its meeting schedule and the agenda for its meetings;

(k) consider any other matter of interest relating to an area covered by this Agreement.

2. The Trade Committee may:

(a) establish and delegate responsibilities to specialised bodies;

(b) receive or seek information from any interested person;

(c) agree to the initiation of negotiations, with the aim of deepening the liberalisation already achieved in sectors covered by this Agreement;

(d) consider any amendment or modification to the provisions of this Agreement, which shall be subject to the completion of the internal legal procedures of each Party;

(e) adopt interpretations of the provisions of this Agreement (5). Such interpretations shall be taken into consideration by arbitration panels established under Title XII (Dispute Settlement);

(f) take such other action in the exercise of its functions as the Parties may agree;

(g) advance in the achievement of the objectives of this Agreement by means of modifications provided for therein, of:

(i) Annex I (Tariff Elimination Schedules), with the aim of adding one or more goods excluded from the tariff elimination schedule of a Party;

(ii) the time schedules established in Annex I (Tariff Elimination Schedules), with the aim of accelerating tariff reduction;

(iii) the specific rules of origin established in Annex II (Concerning the Definition of the Concept of 'Originating Products' and Methods of Administrative Cooperation);

(iv) the procuring entities listed in Appendix 1 of Annex XII (Government Procurement);

(v) the lists of commitments set out in Annexes VII (List of Commitments on Establishment) and Annex VIII (List of Commitments on Cross-Border Supply of Services), and the reservations set out in Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes); and

(vi) other provisions subject to modifications by the Trade Committee pursuant to an explicit provision of this Agreement.

Each Party shall implement, in accordance with its applicable legal procedures, any modification referred to in this subparagraph.

3. The Trade Committee may examine the impact of this Agreement on the micro, small and medium-sized enterprises (hereinafter referred to as 'Micro and SMEs') of the Parties (6), including any resulting benefits.

4. The Parties shall, to the extent possible, exchange information within the Trade Committee concerning agreements establishing or modifying customs unions or free trade areas and, where requested, on other major issues related to the trade policy of each Party regarding third countries.

5. In the exercise of any of the functions set out in this Article, the Trade Committee may adopt any decision as envisaged in this Agreement.

(5) Interpretations adopted by the Trade Committee shall not constitute an amendment or modification to the provisions of this Agreement.

(6) In the case of Ecuador, this examination may include the impact on the Actores de la Economía Popular y Solidaria ('AEPYS') (Popular and Solidarity Economy Stakeholders).

Article 14. Decision-making

1. The Trade Committee shall adopt its decisions by consensus.

2. The decisions adopted by the Trade Committee shall be binding upon the Parties, which shall take all necessary measures to implement them.

3. In the cases referred to in Article 12 paragraph 4, any decision shall be adopted by the EU Party and the signatory Andean Country concerned and shall have effect only between those Parties, provided that such decisions do not affect the rights and obligations of another signatory Andean Country.

Article 15. Specialised Bodies

1. This Agreement establishes the following sub-committees:

(a) Sub-committee on Market Access;

(b) Sub-committee on Agriculture;

(c) Sub-committee on Technical Obstacles to Trade; (d) Sub-committee on Customs, Trade Facilitation and Rules of Origin;

(e) Sub-committee on Government Procurement;

(f) Sub-committee on Trade and Sustainable Development;

(g) Sub-committee on Sanitary and Phytosanitary Measures; and

(h) Sub-committee on Intellectual Property.

2. Any specialised body established under this Agreement shall comprise representatives of the EU Party, and representatives of each signatory Andean Country.

3. The respective scope of competence and duties of the specialised bodies created in this Agreement are defined in the relevant Titles.

4. The Trade Committee may establish other sub-committees, working groups, or any other specialised bodies in order to assist it in the performance of its tasks. The Trade Committee shall determine the composition, duties and rules of procedure of such specialised bodies.

5. The specialised bodies shall inform the Trade Committee, sufficiently in advance, of their schedule of meetings and of the agenda of those meetings. They shall also report on their activities at each of the meetings of that Committee.

6. Notwithstanding paragraph 2, any specialised body may meet in sessions in which the EU Party and one of the signatory Andean Country participate, when such session regards matters relating exclusively to the bilateral relationship between the EU Party and such signatory Andean Country.

7. If another signatory Andean Country expresses interest in the matter to be discussed in such a session, such signatory Andean country may participate in the session subject to prior agreement of the EU Party and the signatory Andean Country concerned.

Article 16. Coordinators of the Agreement

1. Each Party shall designate a Coordinator of the Agreement and notify all other Parties accordingly, at the latest, at entry into force of this Agreement (7).

2. The Coordinators of the Agreement shall:

(a) prepare the agenda and coordinate the preparation of Trade Committee meetings;

(b) follow up on the decisions adopted by the Trade Committee, as appropriate;

(c) act as contact points to facilitate communication between the Parties on any matter covered by this Agreement, unless otherwise provided in this Agreement;

(d) receive any notifications and information submitted under this Agreement, including any notification or information submitted to the Trade Committee unless provided otherwise; and

(e) consider any other matter that may affect the operation of this Agreement, as requested by the Trade Committee.

3. The Coordinators of the Agreement may meet as necessary.

(7) For greater certainty, in the case of the EU Party, the notification shall be considered effective when it has been transmitted to the European Commission.

Title III. Trade In Goods

Chapter 1. Market Access for Goods

Section 1. Common Provisions

Article 17. Objective

The Parties shall progressively liberalise trade in goods over a transitional period starting from the entry into force of this Agreement, in accordance with the provisions of this Agreement and in conformity with Article XXIV of GATT 1994.

Article 18. Scope of Application

Except as otherwise provided in this Agreement, this Chapter shall apply to trade in goods between the Parties.

Article 19. Definitions

For the purposes of this Title:

- "customs duty" includes any duty or charge of any kind imposed on or in connection with the importation of a good, including any form of surtax or surcharge imposed on or in connection with such importation. A "customs duty" does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III of GATT 1994;

(b) anti-dumping, countervailing or safeguard duty applied in conformity with GATT 1994; the WTO Agreement on Implementation of Article VI of GATT 1994 (hereinafter referred to as the "Anti-dumping Agreement"), the WTO Agreement on Subsidies and Countervailing Measures (hereinafter referred to as the "Subsidies Agreement") and the WTO Agreement on Safeguards (hereinafter referred to as the "Safeguards Agreement"), as relevant;

(c) fee or other charge imposed in accordance with Article VIII of GATT 1994.

- "originating product or good" is that which qualifies under the rules of origin set out in Annex II (Concerning the Definition of the Concept of "Originating Products" and Methods for Administrative Cooperation).

Article 20. Classification of Goods

The classification of goods in trade between the Parties shall be that set out in the respective tariff nomenclature of each Party in conformity with the Harmonised Commodity Description and Coding System 2007 (hereinafter referred to as "HS") and subsequent amendments.

Article 21. National Treatment

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

2. For greater clarity, the Parties confirm that national treatment shall mean, with respect to any level of government or authority, a treatment no less favourable than the treatment accorded by that level of government or authority to like, directly competitive or substitutable domestic goods, including those originating in the territory over which that level of government or authority exercises jurisdiction. (8)

(8) Colombia and the EU Party understand that this provision does not prevent the maintenance and enforcement of the liquor monopolies established in Colombia.

Section 2. Elimination of Custom Duties

Article 22. Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, each Party shall dismantle its customs duties on goods originating in another Party in accordance with Annex I (Tariff Elimination Schedules).

2. For each good, the base rate of customs duties, to which the successive reductions are to be applied under paragraph 1, shall be that specified in Annex I (Tariff Elimination Schedules).

3. If at any moment following the date of entry into force of this Agreement, a Party reduces its applied most favoured nation (hereinafter referred to as "MFN") customs duty, such customs duty shall apply only if it is lower than the customs duty calculated in accordance with Annex I (Tariff Elimination Schedules).

4. Upon request of a Party, the Parties shall consult in order to consider accelerating and broadening the scope of the elimination of customs duties set out in Annex I (Tariff Elimination Schedules).

5. Any decision of the Trade Committee to accelerate or broaden the scope of the customs duty elimination in accordance with Article 13 subparagraph 2(g), shall supersede any duty rate or staging category determined pursuant to Annex I (Tariff Elimination Schedules).

6. Except as otherwise provided in this Agreement, no Party may increase any customs duty set as base rate in Annex I (Tariff Elimination Schedules) or adopt any new customs duty on a good originating in another Party.

7. Paragraph 6 shall not preclude any Party from: (a) raising a customs duty to the level established in Annex I (Tariff Elimination Schedules) for the respective year, following a unilateral reduction; or (b) maintaining or increasing a customs duty in accordance with the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as "DSU") or Title XII (Dispute Settlement).

Section 3. Non Tariff Measures

Article 23. Import and Export Restrictions

No Party shall adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except as otherwise provided in this Agreement or in accordance with Article XI of GATT 1994 and its interpretative notes. To this end, Article XI of GATT 1994 and its interpretive notes are incorporated into and made integral part of this Agreement mutatis mutandis.

Article 24. Fees and Charges

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

2. No Party shall require consular transactions (9), including related fees and charges, in connection with the importation of any goods of another Party.

3. Each Party shall make available and maintain, preferably through the Internet, updated information of all fees and charges imposed in connection with importation or exportation.

(9) For the purposes of this paragraph ‘consular transactions’ means requirements that goods of a Party intended for export to the territory of another Party must first be submitted for the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation.

Article 25. Duties and Taxes on Exports

Unless otherwise provided for in this Agreement, no Party shall adopt or maintain any duty or tax, other than internal charges applied in conformity with Article 21, on or in connection with the exportation of goods to the territory of another Party.

Article 26. Import and Export Licensing Procedures

1. No Party shall adopt or maintain a measure that is inconsistent with the WTO Agreement on Import Licensing Procedures (hereinafter referred to as the "Import Licensing Agreement") which is incorporated into and made an integral part of this Agreement, mutatis mutandis.

2. Each Party shall apply the provisions contained in the Import Licensing Agreement, mutatis mutandis, for any licensing procedures for exports to another Party. The notification foreseen in Article 5 of the Import Licensing Agreement shall be carried out between the Parties with regard to licensing procedures for exports.

3. "Import licensing" means administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation to the importing Party.

Article 27. State Trading Enterprises

1. For the purposes of this Agreement, "state trading enterprises" means public and non-public enterprises, wherever located, at central and sub-central level, including marketing boards, which are entrusted with exclusive or special rights or privileges, including through legislative or constitutional powers, through which they influence via their purchases or sales the level or direction of imports and exports (10).

2. The Parties, recognise that state trading enterprises should not operate in a manner that creates obstacles to trade, and to this end, commit to the obligations established under this Article.

3. The Parties reaffirm their existing rights and obligations under Article XVII of GATT 1994, its interpretative notes and supplementary provisions and the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994, which are hereby incorporated into and made an integral part of this Agreement, mutatis mutandis.

4. Each Party shall ensure, in particular, that state trading enterprises shall comply, in their purchases or sales, or whenever they exercise any power, including any legislative or constitutional power which a Party has delegated to them at central or sub-central level, with the obligations undertaken by each Party in this Agreement.

5. The provisions of this Article shall not affect the rights and obligations of the Parties under Title VI (Government Procurement).

6. In the context of the notification submitted by the Parties under Article XVII of GATT 1994, when faced with a request for additional information on the effect of state trading enterprises on bilateral trade, the requested Party shall make its best efforts to ensure maximum possible transparency in order to answer these requests which look for information relevant to determine whether the state trading enterprises comply with the relevant obligations of this Agreement, in accordance with the provisions of Article XVII.4 (d) of GATT 1994 regarding confidential information.

(10) For greater certainty, it is understood that liquor enterprises acting under the framework of the 'monopolio rentístico' as referred to in Article 336 of the Political Constitution of Colombia are encompassed in this definition of State Trading Enterprises.

Section 4. Agricultural Goods

Article 28. Scope of Application

This Section applies to measures adopted or maintained by the Parties in respect of trade in agricultural goods (hereinafter referred to as "agricultural goods") between them covered by the definition of Annex I of the WTO Agreement on Agriculture (hereinafter referred to as the "Agreement on Agriculture") (11).

(11) In the case of Colombia, for purposes of the application of this Article, 'agricultural goods' also includes the following subheadings: 2905.45.00, 3302.10.10, 3302.10.90, 3823.11.00, 3823.12.00, 3823.13.00, 3823.19.00, 3823.70.10, 3823.70.20, 3823.70.30, 3823.70.90, 3824.60.00.

Article 29. Agricultural Safeguard

1. Notwithstanding the provisions of Article 22, a Party may apply an agricultural safeguard measure in the form of additional import duties on originating agricultural goods included in its list of Annex IV (Agricultural Safeguard Measures), provided that the conditions set out in this Article are met. The amount of any additional import duty and any other customs duty on such goods may not exceed the lesser of:

(a) the MFN rate applied; or

(b) the base tariff rate as specified in Annex I (Tariff Elimination Schedules).

2. A Party may apply a quantity-based safeguard measure during any calendar year if at the entry of an originating good in its customs territory the amount of imports of the originating good during such year exceeds the trigger level for such good set out in the list of the Party in Annex IV (Agricultural Safeguard Measures).

3. Any additional duty applied by a Party under paragraphs 1 and 2 shall be in accordance with the list of the Party in Annex IV (Agricultural Safeguard Measures).

4. No Party may apply an agricultural safeguard measure under this Article while at the same time adopting or maintaining with respect to the same good:

(a) a safeguard measure under Chapter 2 (Trade Remedies); or

(b) a measure under Article XIX of GATT 1994 and Safeguards Agreement.

5. No Party may adopt or maintain an agricultural safeguard measure:

(a) as from the date on which a good is subject to duty-free treatment under Annex I (Tariff Elimination Schedules), except as otherwise provided in subparagraph (b); or

(b) after the expiry of the transition period set out in the list of the Party in Annex IV (Agricultural Safeguard Measures); or

(c) that increases a customs duty within a tariff rate quota.

6. Within 10 days from the application of an agricultural safeguard measure pursuant to paragraphs 1 and 2, the Party applying the measure shall notify in writing to the exporting Party concerned, and shall provide relevant data and justification for the measure. The Party applying the measure shall provide the exporting Party concerned with an opportunity to consult regarding the conditions for its application in accordance with such paragraphs.

7. Each Party shall maintain its rights and obligations under Article 5 of the Agreement on Agriculture except for agricultural trade subject to preferential treatment.

Article 30. Price Band System

Unless otherwise provided in this Agreement:

(a) Colombia and Ecuador may apply the Andean Price Band System established in Decision 371 of the Andean Community and its modifications, or subsequent systems for agricultural goods covered by such Decision;

(b) Peru may apply the Price Band System established in the Supreme Decree 115-2001-EF and its modifications, or subsequent systems for agricultural goods covered by such Decree.

Article 31. System of Entry Prices

Unless otherwise provided in this Agreement, the EU Party may apply the Entry Price System established by Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector and its modifications or subsequent systems.

Article 32. Export Subsidies and other Equivalent Effect Measures

1. For the purposes of this Article, "export subsidies" shall have the meaning assigned to that term in Article 1 (e) of the Agreement on Agriculture, including any amendment of that Article.

2. The Parties share the objective of working jointly in the WTO to reach an agreement to eliminate export subsidies and other equivalent effect measures for agricultural goods.

3. Upon entry into force of this Agreement, no Party shall maintain, introduce or reintroduce export subsidies or other measures with equivalent effect on agricultural goods which are fully and immediately liberalised, or which are fully but not immediately liberalised and benefit from a duty free quota at entry into force of this Agreement in accordance with Annex I (Tariff Elimination Schedules), and are destined to the territory of another Party.

4. No Party shall maintain, introduce or reintroduce export subsidies or other measures with equivalent effect on agricultural goods which are fully but not immediately liberalised and which do not benefit from a duty free quota at entry into force of this Agreement, from the date on which those goods are fully liberalised.

5. Without prejudice to paragraph 3 and 4, if a Party maintains, introduces or reintroduces subsidies or other measures with equivalent effect on the export of partially or fully liberalised agricultural goods to another Party, the importing Party may apply an additional tariff that will increase customs duties for imports of such good up to the level of either the MFN applied duty or the base rate set out in Annex I (Tariff Elimination Schedules), whichever is lower, for the period established for retaining the export subsidy.

6. In order for the importing Party to eliminate the additional tariff applied in accordance with paragraph 5, the exporting Party shall provide detailed information which demonstrates compliance with the provisions of this Article.

Article 33. Administration and Implementation of Tariff Rate Quotas

1. Each Party shall implement and administer tariff rate quotas for imports of agricultural goods set out in Annex I (Tariff Elimination Schedules) in accordance with Article XIII of GATT 1994, including its interpretative notes, and the Import

Licensing Agreement.

2. The Parties shall administer tariff rate quotas for imports of agricultural goods on a first-come first-served basis.

3. Upon request of an exporting Party, an importing Party shall consult with the exporting Party with respect to the administration of the tariff rate quotas of the importing Party. These consultations shall replace the consultations provided for under Article 301 provided that they meet the requirement set out in paragraph 9 of that Article.

Section 5. Management of Administrative Errors

Article 34. Management of Administrative Errors

In case of error by the competent authorities of any Party in the proper management of the preferential system at export, and in particular in the application of the provisions of Annex II (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation), and where this error leads to consequences in terms of import duties, any Party facing such consequences may request, after the matter has been technically discussed between the Parties concerned within the Sub-committee on Customs, Trade Facilitation and Rules of Origin set out in Article 68, that the Trade Committee examine the possibilities of adopting all appropriate measures with a view to resolving the situation. The decision of the Trade Committee on the appropriate measures shall be adopted by agreement of the Parties concerned.

Section 6. Sub-committees

Article 35. Sub-committee on Market Access

1. The Parties hereby establish a Sub-committee on Market Access comprising representatives of each Party.

2. The Sub-committee shall meet upon request of a Party or of the Trade Committee to consider any matter not covered by another sub-committee arising under this Chapter.

3. The functions of the Sub-committee shall include, inter alia:

(a) promoting trade in goods between the Parties, including through consultations on accelerating and broadening the scope of tariff elimination under this Agreement and other issues as appropriate;

(b) addressing any non-tariff measure which may restrict trade in goods between the Parties and, if appropriate, referring such matters to the Trade Committee for its consideration;

(c) providing advice and recommendations to the Trade Committee on cooperation needs regarding market access matters;

(d) consulting on, and endeavouring to resolve, any difference that may arise between the Parties on matters related to amendments to the Harmonized System, including the classification of goods, to ensure that the obligations of each Party under this Agreement are not altered.

Article 36. Sub-committee on Agriculture

1. The Parties hereby establish a Sub-committee on Agriculture comprised of representatives of the EU Party and each signatory Andean Country.

2. The Sub-committee on Agriculture shall:

(a) monitor and promote cooperation on the implementation and administration of Section 4, in order to facilitate the trade of agricultural goods between the Parties;

(b) resolve any unjustified obstacle in the trade of agricultural goods between the Parties;

(c) consult on matters related to Section 4 in coordination with other relevant sub-committees, working groups or any other specialised body under this Agreement;

(d) evaluate the development of agricultural trade between the Parties and the impact of this Agreement on the agricultural sector of each Party, as well as the operation of the instruments of this Agreement, and recommend any appropriate action to the Trade Committee;

(e) undertake any additional work that the Trade Committee may assign to it; and

(f) report and submit for consideration of the Trade Committee the results of its work under this paragraph.

3. The Sub-committee on Agriculture shall meet at least once a year. When special circumstances arise, upon request of a Party, the Sub-committee shall meet at the agreement of the Parties no later than 30 days following the date of such request. Meetings of the Sub-Committee on Agriculture may also take place at bilateral level and shall be chaired by representatives of the Party hosting the meeting.

4. The Sub-committee on Agriculture shall adopt all decisions by consensus.

Chapter 2. Trade Remedies

Section 1. Anti-dumping and Countervailing Measures

Article 37. General Provisions

1. The Parties reaffirm their rights and obligations under the Anti-dumping Agreement, the Subsidies Agreement and WTO Agreement on Rules of Origin (hereinafter referred to as the "Rules of Origin Agreement").

2. In the case of the application of an anti-dumping duty or countervailing measure, or the acceptance of a price undertaking, by the Andean Community authority on behalf of two or more member Countries of the Andean Community, the competent Andean Community judicial body shall be the single forum for judicial review.

3. The Parties shall ensure that anti-dumping measures are not applied simultaneously in relation to the same product by regional authorities and national authorities. The same rule shall apply for countervailing measures.

Article 38. Transparency

1. The Parties agree that trade remedies should be used in full compliance with the relevant WTO requirements and should be based on a transparent system.

2. Recognising the benefits of legal certainty and predictability for economic operators, each Party shall ensure that its domestic legislation regarding trade remedies is fully consistent with the relevant WTO rules.

3. Without prejudice to Article 6.5 of the Anti-dumping Agreement and Article 12.4 of the Subsidies Agreement, each Party shall ensure, as soon as possible in accordance with its domestic legislation after the imposition of provisional measures, and in any event, prior to any final determination, full and meaningful disclosure of the essential facts under consideration which constitute the basis for the decision as to whether or not to apply measures. The disclosure of such information shall be made in writing and allow interested parties sufficient time to make comments.

4. Provided it does not unnecessarily delay the conduct of the investigation, upon request of any interested party, the investigating authority shall provide the possibility to be heard, in order to express their views during trade remedies investigations.

Article 39. Consideration of Public Interest

In accordance with their domestic law, the EU Party and Colombia shall provide the opportunity for industrial users and importers of the product under investigation, as well as for representative consumer organisations, as appropriate, to provide information which is relevant to the investigation. Such information shall be taken into account by the investigating authority, to the extent that it is relevant, duly supported by evidence and filed within the time limits specified in the domestic law.

Article 40. Lesser Duty Rule

Notwithstanding their rights under the Anti-dumping Agreement and the Subsidies Agreement as regards the application of anti-dumping and countervailing duties, the EU Party and Colombia consider it desirable that the duty applied be less than the corresponding margin of dumping or subsidy, as appropriate, if the lesser duty would be adequate to remove the injury to the domestic industry.

Article 41. Investigating Authorities

For the purposes of this Section, "investigating authority" means:

(a) with respect to Colombia, the Ministry of Trade, Industry and Tourism, or its successor;

(b) with respect to Peru, the National Institute for the Defense of Competition and Protection of Intellectual Property, or its successor;

(c) with respect to Ecuador, the Ministry of Foreign Trade, or its successor; and

(d) with respect to the EU Party, the European Commission

Article 42. Exclusion from the Dispute Settlement Mechanism

Title XII (Dispute Settlement) does not apply to this Section.

Section 2. Multilateral Safeguard Measures

Article 43. General Provisions

Each Party retains its rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement, and the Rules of Origin Agreement.

Article 44. Transparency

Notwithstanding Article 43, upon request of another Party, a Party initiating an investigation or intending to adopt safeguard measures shall provide immediately ad hoc written notification of all pertinent information, including where relevant, regarding the initiation of a safeguard investigation, the preliminary determination and the final determination of the investigation.

Article 45. Non-simultaneous Application of Safeguard Measures

No Party may apply simultaneously, with respect to the same product:

(a) a bilateral safeguard measure in accordance with Section 3 (Bilateral Safeguard Clause) of this Chapter; and

(b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

Article 46. Investigating Authority

For the purposes of this Section, "investigating authority" means:

(a) with respect to Colombia, the Ministry of Trade, Industry and Tourism, or its successor;

(b) with respect to Peru, the National Institute for the Defense of Competition and Protection of Intellectual Property;

(c) with respect to Ecuador, the Ministry of Foreign Trade, or its successor; and

(d) with respect to the EU Party, the European Commission.

Article 47. Exclusion from Dispute Settlement Mechanism

Except for Article 45, Title XII (Dispute Settlement) shall not apply to this Section.

Section 3. Bilateral Safeguard Clause

Article 48. Application of a Bilateral Safeguard Measure

1. Notwithstanding Section 2 (Multilateral Safeguard Measures), if as a result of concessions under this Agreement, a product originating in a Party is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to domestic producers (12) of like or directly competitive products, the importing Party may adopt appropriate measures under the conditions and in accordance with the procedures laid down in this Section.

2. A Party may only apply bilateral safeguard measures during the transitional period (13).

(12) For the purposes of this Article, with respect to Ecuador, serious injury or a threat of serious injury to domestic producers shall also be understood as serious injury or a threat of serious injury in an infant industry.

(13) Transitional period means 10 years from the date of entry into force of this Agreement. For any good for which the Schedule of Annex I (Tariff Elimination Schedules) of the Party applying the measure provides for a tariff elimination period of 10 or more years, 'transitional period' means the tariff elimination period set out in that Schedule for such good, plus three years.

Article 49. Notification and Consultations

1. A Party shall immediately notify the exporting Party concerned upon the initiation of an investigation and the application of provisional and definitive measures.

2. When a Party considers that the circumstances established in Article 48 exist for the application or extension of a definitive measure, it shall provide adequate opportunities to conduct consultations with the affected Party, in accordance with the legislation of each Party, with a view to examining the available information, exchanging opinions on the application or extension of a measure and achieving a mutually satisfactory solution.

3. The consultations referred to in paragraph 2 shall begin within 15 days following the date of receipt by the affected Party of the invitation to consult from the investigating authority.

4. If no satisfactory solution has been reached within 45 days following the date of receipt by the affected Party of the invitation to consult, the importing Party may adopt the measures to remedy the circumstances in accordance with this Section.

5. A Party may apply a bilateral safeguard measure on a provisional basis, without prior consultations.

Article 50. Type of Measures

Any bilateral safeguard measure applied by an importing Party under Article 48 may consist of one or more of the following measures:

(a) a suspension of the further reduction of the customs duty on the product concerned provided for in the schedule of such Party under Annex I (Tariff Elimination Schedules), or

(b) an increase in the customs duty on the product concerned to a level which does not exceed the most-favoured-nation applied customs duty on the product in effect at the time the measure is taken or the base rate as specified in the schedule of such Party under Annex I (Tariff Elimination Schedules), whichever is lower.

Article 51. Investigation Procedure

1. A Party shall only apply a bilateral safeguard measure following an investigation by the competent authorities of that Party in accordance with Article 3 of the Agreement on Safeguards, and to this end, that Article is incorporated into and made an integral part of this Agreement, mutatis mutandis.

2. Any investigation by a Party pursuant to paragraph 1 shall comply with the requirements of Article 4.2(a) and 4.2(c) of the Agreement on Safeguards, and to this end, Article 4.2(a) and 4.2(c) of the Agreement on Safeguards is incorporated into and made an integral part of this Agreement, mutatis mutandis.

3. In addition to paragraph 2, the investigating Party shall demonstrate on the basis of objective evidence the existence of a causal link between the increase of the imports of the product of the exporting Party and serious injury or threat thereof.

4. Each Party shall ensure that its competent authorities complete any such investigation within the time limits established in its domestic legislation, which shall not exceed 12 months from the date of its initiation.

Article 52. Conditions and Duration of a Measure

1. No Party may apply a bilateral safeguard measure:

(a) except to the extent, and for such period of time, as may be necessary to prevent or remedy serious injury pursuant to Article 48;

(b) for a period exceeding two years; this period may exceptionally be extended by another two years if:

(i) the competent authorities of the importing Party determine, in conformity with the relevant procedures of Article 51, that the measure continues to be necessary to prevent or remedy serious injury pursuant to Article 48; and

(ii) there is evidence that the domestic industry is adjusting; the total period of application of a safeguard measure, including the period of initial application and any extension thereof, shall not exceed four years.

2. When a Party terminates a bilateral safeguard measure, the rate of customs duty shall be the rate that, according to the Annex I (Tariff Elimination Schedules) of that Party, would have been in effect without the measure.

Article 53. Provisional Measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis, pursuant to a preliminary determination that there is clear evidence that imports of a product originating in the exporting Party have increased as a result of the reduction or elimination of duties under Annex I (Tariff Elimination Schedules), and such imports cause or threaten to cause serious injury pursuant to Article 48.

2. The duration of any provisional measure shall not exceed 200 days, during which period the Party shall comply with the requirements of Articles 49 and 51, paragraphs 1, 2 and 3.

3. The Party shall promptly refund any increase in customs duties applied pursuant to paragraph 1 if the investigation does not determine that the requirements of Article 48 are met. The duration of any provisional measure shall be counted as part of the period described in Article 52, subparagraph 1 (b).

Article 54. Compensation

1. A Party seeking to extend a bilateral safeguard measure shall consult with the Party whose products are subject to the measure in order to mutually agree on appropriate compensation in the form of concessions having substantially equivalent trade effect. The importing Party shall provide an opportunity for such consultations no later than 30 days before the extension of the bilateral safeguard measure.

2. If consultations under paragraph 1 do not result in an agreement on compensation within 30 days of the offer to consult, and the importing Party decides to extend the safeguard measure, the Party whose products are subject to the safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party extending the measure. (14)

(14) With respect to Ecuador, compensation in the form of concessions or the suspension of substantially equivalent concessions shall take place only after the bilateral safeguard measure has been applied for three years

Article 55. Re-application of a Measure

No safeguard measure referred to in this Section shall be applied to the import of a product that has previously been subject to such a measure, except for one time for a period of time equal to half of that during which such measure had been previously applied, provided that the period of non-application is at least one year.

Article 56. Outermost Regions of the European Union (15)

1. When a product originating in the signatory Andean Countries is being introduced into the territory of the outermost regions of the European Union (hereinafter referred to as the "EU outermost regions") in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the EU outermost regions, the EU Party, after having examined alternative solutions, may exceptionally take safeguard measures limited to the territory of the region(s) concerned.

2. The safeguard measures for EU outermost regions shall apply in accordance with the provisions of this Chapter.

(15) At the date of the signature of this Agreement, the outermost regions of the European Union are: Guadeloupe, French Guiana, Martinique,

Réunion, Saint-Martin, the Azores, Madeira and the Canary Islands. This Article will apply equally to the country or territory which changes its status to outermost region by decision of the European Council in accordance with the procedure referred in Article 355(6) of the Treaty on the Functioning of the European Union as of the date of adoption of that decision. In case an outermost region of the European Union changes its status as such by the same procedure, this Article will not apply to it as of the date of the corresponding European Council decision. The EU Party will notify the other Parties any modification of the territories considered outermost regions of the European Union.

Article 57. Competent Authority

For the purpose of this Section, competent authority means:

(a) for Colombia, the Ministry of Trade, Industry and Tourism, or its successor;

(b) for Peru, the Ministry of Foreign Trade and Tourism, or its successor;

(c) for Ecuador, the Ministry of Foreign Trade, or its successor; and

(d) for the EU Party, the European Commission.

Chapter 3. Customs and Trade Facilitation

Article 58. Objectives

1. The Parties acknowledge the importance of customs and trade facilitation matters in the evolving global trading environment. The Parties agree to reinforce cooperation in this area with a view to ensuring that the relevant legislation and procedures of each Party, as well as the administrative capacity of their respective administrations, fulfil the objectives of effective control and promotion of trade facilitation.

2. The Parties recognise that legitimate public policy objectives, including those related to security, fraud prevention, and fight against fraud, shall not be compromised in any way.

Article 59. Customs and Trade-related Procedures

1. Each Party shall establish efficient, transparent and simplified procedures in order to reduce costs and to ensure predictability for importers and exporters.

2. The Parties agree that their respective trade and customs legislation, provisions and procedures shall be based upon:

(a) international instruments and standards applicable in the area of customs and trade, including the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures (hereinafter referred as "Revised Kyoto Convention"), the International Convention on the Harmonized Commodity Description and Coding System (hereinafter referred as "HS Convention"), the Framework of Standards to Secure and Facilitate Global Trade of the World Customs Organisation (hereinafter referred as "WCO SAFE") and the Customs Data Model of the WCO (hereinafter referred as "Data Model");

(b) the protection and facilitation of trade through effective enforcement of and compliance with the legal requirements;

(c) requirements for economic operators that are reasonable, non-discriminatory and prevent fraud;

(d) the use of a single administrative document or its electronic equivalent, for the purposes of filing customs declarations at import and export;

(e) the application of modern customs techniques, including risk assessment, simplified procedures for entry and release of goods, post release controls, and company audit methods;

(f) the progressive development of systems, including those based upon information technology, to facilitate the electronic exchange of data between economic operators, customs administrations and other related agencies. To this end, and to the extent possible, each Party shall progressively work towards the establishment of a single window in order to facilitate external trade operations;

(g) rules that ensure that any penalty imposed for breaches of customs regulations or procedural requirements is proportionate and non-discriminatory, and the application of which shall not unduly delay the release of goods;

(h) fees and charges that are reasonable and do not exceed the cost of the service provided in relation to a specific transaction, and are not calculated upon an ad valorem basis. Fees and charges shall not be imposed for consular services;

(i) the elimination of any requirement for the mandatory use of pre-shipment inspections or their equivalent; and

(j) the need to ensure that all competent administrative entities that intervene in the control and physical inspection of goods subject to importation or exportation perform their activities, whenever possible, in a simultaneous manner and in a single place.

3. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, each Party shall:

(a) take further actions with a view to reducing, simplifying and standardising data and documentation required by customs and other agencies;

(b) simplify requirements and formalities wherever possible, in respect of the prompt clearance and release of goods, allowing importers to carry out customs release without the payment of customs duties, subject to the constitution of a guarantee, according to domestic legislation, in order to ensure the final payment of customs duties, fees and charges;

(c) provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right to appeal customs administrative rulings and decisions affecting imports, exports or goods in transit. Procedures shall be easily accessible, including to Micro and SMEs; and

(d) ensure that the highest standards of integrity are maintained, through the application of measures reflecting the principles of the relevant international conventions and instruments in this area.

Article 60. Advance Rulings

1. Upon written request and prior to the importation of goods into its territory, each Party shall issue, through its competent authorities written advance rulings, in accordance with its domestic laws and regulations, on tariff classification, origin, or any other related matters as the Parties may agree.

2. Subject to any confidentiality requirements in its law, each Party shall publish, to the extent possible through electronic means, its advance rulings on tariff classification and any other related matters as the Parties may agree.

3. To facilitate trade, the Parties shall include in their bilateral dialogue regular updates on changes in their respective legislation on the matters referred to in paragraphs 1 and 2.

4. All procedural issues for the issuance of advance rulings will be determined by the domestic legislation of each Party, in accordance with WCO International Standards. These procedures shall be published and publicly available.

Article 61. Risk Management

1. Each Party shall use risk management systems in order to enable its customs authorities to focus their inspection activities on high risk operations and to speed up the release of low risk goods.

2. The importing Party shall note the efforts carried out by the exporting Party in relation to the security of the trade supply chain.

3. The Parties shall work towards exchanging information on risk management techniques applied by their respective customs authorities, respecting the confidentiality of the information and, whenever necessary, transfer knowledge.

Article 62. Authorised Economic Operator

The Parties shall promote the implementation of the Authorised Economic Operator (hereinafter referred to as "AEO") concept according to the WCO SAFE. A Party shall grant AEO security status and trade facilitation benefits to operators meeting its customs security standards, in accordance with its domestic legislation.

Article 63. Transit

1. The Parties shall ensure freedom of transit through their territory via the route most convenient for transit.

2. Any restrictions, controls or requirements must pursue a legitimate public policy objective, be non-discriminatory,

proportionate and uniformly applied.

3. Without prejudice to legitimate customs control and supervision of goods in transit, the Parties shall accord to traffic in transit to or from the territory of any Party, treatment no less favourable than that accorded to traffic in transit through its territory.

4. The Parties shall operate under bonded transport regimes that allow the transit of goods without payment of customs duties or other charges subject to the provision of an appropriate guarantee.

5. The Parties shall promote regional transit arrangements with a view to reducing trade barriers.

6. The Parties shall draw upon and use international standards and instruments relevant to transit.

7. The Parties shall ensure cooperation and co-ordination between all concerned authorities and agencies in their territory to facilitate traffic in transit and promote cooperation across borders.

Article 64. Relations with the Business Community

The Parties agree:

(a) to ensure that all customs related legislation and procedures as well as customs duties, fees and charges are made publicly available, to the extent possible through electronic means, together with, when appropriate, the necessary explanations;

(b) that there shall be, to the extent possible, a reasonable period of time between the publication of new or amended customs related legislation and procedures, as well as customs duties, fees or charges and their entry into force;

(c) to offer the business community opportunities to make comments on customs related legislative proposals and procedures. To this end, each Party shall establish consultation mechanisms between its administration and the business community;

(d) to make publicly available relevant notices of an administrative nature, including agency requirements and entry procedures, hours of operation and operating procedures for customs offices at ports and border crossing points, and points of contact for information enquiries;

(e) to foster cooperation between operators and relevant trade-related authorities via the use of non-arbitrary and publicly accessible procedures, in order to fight against fraud and illegal activities, to enhance the security of the supply chain and to facilitate trade; and

(f) to ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, following best practices, and remain the least trade-restrictive possible.

Article 65. Customs Valuation

The Agreement on the Implementation of Article VII of the GATT 1994 (hereinafter referred to "Customs Valuation Agreement") shall govern customs valuation rules applied to reciprocal trade between the Parties.

Article 66. Customs Cooperation

1. The Parties shall promote and facilitate cooperation between their respective customs administrations in order to ensure that the objectives set out in this Chapter are met, particularly to guarantee the simplification of customs procedures and the facilitation of legitimate trade while retaining their control capabilities.

2. The cooperation pursuant to paragraph 1 shall include, among others:

(a) exchanges of information concerning customs legislation, procedures and techniques in the following areas:

(i) simplification and modernisation of customs procedures; and

(ii) relations with the business community;

(b) the development of joint initiatives in mutually agreed areas; and

(c) the promotion of coordination among related agencies.

3. Cooperation in the area of customs enforcement of intellectual property rights by customs authorities shall be carried out in accordance with Title VII (Intellectual Property).

Article 67. Mutual Assistance

The administrations of the Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Annex V (Mutual Administrative Assistance in Customs Matters).

Article 68. Sub-committee on Customs, Trade Facilitation and Rules of Origin

1. The Parties establish a Sub-committee on Customs, Trade Facilitation and Rules of Origin, comprising representatives of each Party. The Sub-committee shall meet on a date and with an agenda agreed in advance by the Parties and shall be chaired for a period of one year by each Party on a rotational basis. The Sub-committee shall report to the Trade Committee.

2. The Sub-committee shall, among others:

(a) monitor the implementation and administration of this Chapter and of Annex II (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation);

(b) provide a forum to consult and discuss on all issues concerning customs, including in particular customs procedures, customs valuation, tariff regimes, customs nomenclature, customs cooperation and mutual administrative assistance in customs matters;

(c) provide a forum to consult and discuss issues relating to rules of origin and administrative cooperation;

(d) enhance cooperation on the development, application and enforcement of customs procedures, mutual administrative assistance in customs matters, rules of origin and administrative cooperation;

(e) submit to the Trade Committee proposals for modifications to Annex II (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation) for their adoption;

(f) provide a forum to consult and discuss requests for cumulation of origin under Articles 3 and 4 of Annex II (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation);

(g) endeavour to reach mutually satisfactory solutions when differences between the Parties arise after a verification process conducted under Article 31 of Annex II (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation);

(h) endeavour to reach mutually satisfactory solutions when differences regarding the tariff classification of goods arise between the Parties. If the matter is not resolved in the course of these consultations, it shall be referred to the Harmonized System Committee of the WCO. Such decisions shall be binding for the Parties involved.

3. The Parties may agree to hold ad hoc meetings for customs cooperation or for rules of origin and mutual administrative assistance.

Article 69. Technical Assistance on Customs and Trade Facilitation

1. The Parties recognise the importance of technical assistance in the area of customs and trade facilitation in order to implement the commitments set out in this Chapter.

2. The Parties agree to cooperate particularly, but not exclusively, on:

(a) enhancing institutional cooperation between the Parties;

(b) providing expertise and capacity building on legislative and technical matters to develop and enforce customs legislation;

(c) the application of modern customs techniques, including risk management, binding advance rulings, customs valuation, simplified procedures for entry and release of goods, post release controls, corporate audit methods and AEO;

(d) the introduction of procedures and practices reflecting, to the extent practicable, international instruments and standards applicable in the area of customs and trade, including WTO rules and WCO instruments and standards, inter alia the Revised Kyoto Convention and the WCO SAFE; and

(e) the simplification, harmonisation and automation of customs procedures.

Article 70. Implementation

1. The provisions of Article 59, subparagraph 2 (f), and Article 60 shall apply to Peru two years after the entry into force of this Agreement.

2. The provisions of Article 60, with the exception of those concerning advance rulings on tariff classification, and Article 62 shall apply to Ecuador two years after the entry into force of the Protocol of Accession to this Agreement to take account of the accession of Ecuador.

Chapter 4. Technical Barriers to Trade

Article 71. Objectives

The objectives of this Chapter are:

(a) to facilitate and increase trade in goods and to obtain effective access to the market of the Parties, by improving the implementation of the WTO Agreement on Technical Barriers to Trade (hereinafter referred to "TBT Agreement");

(b) to avoid the creation, and encourage the elimination of unnecessary technical barriers to trade; and

(c) to enhance cooperation between the Parties in matters covered by this Chapter.

Article 72. Definitions

1. For the purposes of this Chapter the definitions in Annex 1 of the TBT Agreement shall apply.

2. The following definitions shall also apply:

- "non-permanent labelling" means affixing information to a product using adhesive labels, hanging tags or another kind of label that can be removed, or enclosing the information in the product packaging;

- "permanent labelling", means affixing information to a product by securely fastening it to the product by printing, sewing, engraving or similar processes.

Article 73. Relationship with the Tbt Agreement

The Parties reaffirm their rights and obligations under the TBT Agreement, which is incorporated into and made an integral part of this Agreement, mutatis mutandis.

Article 74. Scope of Application

1. The provisions of this Chapter apply to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures, including any amendment thereof or addition thereto, which may affect trade in goods between the Parties.

2. This Chapter does not apply to:

(a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; and

(b) sanitary and phytosanitary measures.

Article 75. Cooperation and Trade Facilitation

1. The Parties agree that cooperation between the authorities and bodies, in both the public and private sector, involved in technical regulation, standardisation, conformity assessment, accreditation, metrology and border control and market surveillance, is important for facilitating trade between the Parties. To that end the Parties commit to:

(a) intensifying mutual cooperation to facilitate access to their markets and to increase knowledge and understanding of their respective systems;

(b) identifying, developing and promoting initiatives that facilitate trade taking their respective experience into consideration. These initiatives may include, among others:

(i) the exchange of information, experience and data, scientific and technological cooperation and the use of good regulatory practices;

(ii) the simplification of certification procedures and administrative requirements established by a standard or technical regulation, and the elimination of those requirements for registration or prior authorisation that are unnecessary by virtue of the provisions of the TBT Agreement;

(iii) work towards the possibility of converging, aligning or establishing the equivalence of technical regulations and conformity assessment procedures. Equivalence shall not a priori entail any obligation whatsoever on the Parties, unless otherwise explicitly agreed;

(iv) the examination, in a future regulatory review, of the possibility of using accreditation or designation as a tool for recognising the conformity assessment bodies established in the territory of another Party; and

(v) the promotion and facilitation of cooperation and the exchange of information between relevant public or private bodies of the Parties.

2. When a Party detains goods originating from the territory of another Party at a port of entry due to a perceived non-compliance with a technical regulation, the Party detaining the goods shall notify the importer without delay of the reasons for the detention.

3. A Party, upon request of another Party, shall give appropriate consideration to the proposals of such other Party for cooperation under this Chapter.

Article 76. Technical Regulations

1. The Parties shall use international standards as the basis for preparing their technical regulations unless those international standards are an ineffective or inappropriate means for achieving the legitimate objective pursued. A Party shall, upon request of another Party, provide the reasons for not having used international standards as a basis for preparing its technical regulations.

2. Upon request of another Party interested in developing a similar technical regulation, and in order to minimise the duplication of costs, a Party shall, to the extent possible, provide the requesting Party with any information, technical study or risk assessment or other available relevant document, with the exception of confidential information, on which that Party has relied for the development of such technical regulation.

Article 77. Standards

1. Each Party commits to:

(a) maintaining effective communication between its regulatory authorities and its standardisation institutions;

(b) applying the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the Agreement adopted by the WTO Committee on Technical Barriers to Trade on 13 November 2000, when determining whether an international standard, guide or recommendation exists within the meaning of Articles 2 and 5 and in Annex 3 to the TBT Agreement;

(c) encouraging its standardisation bodies to cooperate with the relevant standardisation bodies of another Party in international standardisation activities. Such cooperation may be undertaken in the international standardisation bodies or at regional level when invited by the corresponding standardisation body or via memoranda of understanding with the aim, among others, of developing common standards;

(d) exchanging information on the use of standards by the Parties in connection with technical regulations and ensure, to the extent possible, that standards are not mandatory;

(e) exchanging information on the standardisation processes of each Party and the extent of the use of international, regional or sub-regional standards as the basis for national standards; and

(f) exchanging general information on cooperation agreements concluded with third countries on standardisation matters.

2. Each Party shall recommend that non-governmental standardisation bodies located in its territory observe the provisions

of this Article.

Article 78. Conformity Assessment and Accreditation

1. The Parties recognise that there is a broad range of mechanisms to facilitate the acceptance in the territory of a Party of the results of conformity assessment procedures conducted in the territory of another Party. Accordingly, the Parties may agree:

(a) on acceptance of a declaration of conformity from the supplier (16);

(b) on acceptance of the results of the conformity assessment procedures of the bodies located in the territory of another Party;

(c) that a conformity assessment body located in the territory of a Party may enter into voluntary recognition agreements with a conformity assessment body located in the territory of another Party for the acceptance of the results of its conformity assessment procedures;

(d) on the designation of conformity assessment bodies located in the territory of another Party; and

(e) on the adoption of accreditation procedures to qualify the conformity assessment bodies located in the territory of another Party.

2. To that end the Parties commit to:

(a) ensuring that the non-governmental bodies used in conformity assessment may compete;

(b) promoting the acceptance in conformity assessment processes of the results issued by bodies recognised under a multilateral accreditation agreement or by an agreement reached between some of their respective conformity assessment bodies;

(c) considering initiating negotiations in order to reach agreements facilitating the acceptance in their territories of the results of conformity assessment procedures conducted by bodies located in the territory of another Party, when it is in the interest of the Parties and it is economically justified; and

(d) encouraging their conformity assessment bodies to take part in agreements with the conformity assessment bodies of another Party for the acceptance of conformity assessment results.

(16) Ecuador shall recognise a self-declaration from the supplier that the product conforms to the technical regulations of the European Union as sufficient proof of conformity with Ecuadorian technical regulations. This form of recognition shall remain in force until the EU Party and Ecuador agree on an alternative to replace it within the Trade Committee.

Article 79. Transparency and Notification Procedures

1. Each Party shall electronically transmit to the contact points established in Article 10 of the TBT Agreement, directly or via the WTO Secretariat, their proposed technical regulations and conformity assessment procedures or those adopted to address urgent problems of safety, health, protection of the environment or national security, arising or threatening to arise, in accordance with the TBT Agreement. The electronic transmission of technical regulations and conformity assessment procedures shall include an electronic link to, or a copy of, the full text of the document giving rise to the notification.

2. Each Party shall also publish or electronically transmit those drafts or proposals for technical regulations and conformity assessment procedures or those adopted to address urgent problems of safety, health, protection of the environment or national security, arising or threatening to arise, which are in accordance with the technical content of the relevant international standards.

3. In accordance with paragraphs 1 and 2, each Party shall grant a period of at least 60 days, and whenever possible 90 days, from the date of the electronic transmission of the proposed technical regulations and conformity assessment procedures so that the other Parties and other interested persons may submit written comments. A Party shall give positive consideration to reasonable requests for extending the period for comments.

4. A Party shall give appropriate consideration to the comments received from another Party when a proposed technical regulation is submitted to public consultation and, upon request of another Party, provide written answers to the comments

made by such other Party.

5. Each Party shall publish or make available to the public, in printed or electronic form, its answers to the significant comments received no later than the date of publication of the final technical regulation or conformity assessment procedure.

6. Each Party shall, upon request of another Party, provide information on a technical regulation or conformity assessment procedure which the Party has adopted or proposes to adopt.

7. The time period between the publication and the entry into force of technical regulations and conformity assessment procedures shall not be less than six months, unless it is not feasible to achieve the legitimate objectives within that period. A Party shall give positive consideration to reasonable requests for an extension of this period.

8. The Parties shall ensure that all technical regulations and conformity assessment procedures adopted and in force are publicly available on a free official website, in such a way that they are easily located and accessed. If appropriate, guides on the application of technical regulations shall also be provided when they exist.

Article 80. Border Control and Market Surveillance

The Parties commit to:

(a) exchanging information and experiences on their border control and market surveillance activities, except in those cases in which the documentation is confidential; and

(b) ensuring that border control and market surveillance activities are undertaken by the competent authorities, to which end these authorities may use accredited, designated or delegated bodies, avoiding conflicts of interest between those bodies and the economic operators subject to control or supervision.

Article 81. Marking and Labelling

1. When a Party requires mandatory marking or labelling of products:

(a) permanent marking or labelling shall be required only when the information is relevant for consumers or users of the product or to indicate the conformity of the product with the mandatory technical requirements;

(b) additional information on the packing or packaging of the product by means of non-permanent labels may be required, when necessary to ensure market surveillance by the competent authorities;

(c) in relation to the information referred to in subparagraph (b), when reviewing the applicable rules, such Party shall examine the possibility of requiring that information to be provided by other means;

(d) unless necessary in view of the risk of the products to human, animal or plant health or life, the environment or national safety, such Party shall not require the approval, registration or certification of labels or markings as a precondition for sale on their respective markets. This subparagraph is without prejudice to measures adopted by a Party pursuant to its domestic rules to verify the compliance of labels with the mandatory requirements, and measures taken to control practices which may mislead consumers;

(e) when a Party requires the use of an identification number by the economic operator, this shall be issued without undue delay;

(f) provided it is not misleading, contradictory or confusing in relation to the information required in the country of destination of the goods, such Party shall allow:

(i) information in other languages in addition to the language required in the country of destination of the goods;

(ii) international nomenclatures, pictograms, symbols or graphics; and

(iii) information additional to that required in the country of destination of the goods;

(g) when the legitimate objectives established in the TBT Agreement are not compromised, such Party shall endeavour to accept non-permanent or removable labels, or having the information provided by means of the product manual, packing or packaging instead of it being printed on or physically adhered to the product.

2. When a Party requires marking or labelling of textiles, clothing or footwear, such Party:

(a) may only require the following information to be permanently marked or labelled:

(i) in the case of textiles and clothing: fibre content, country of origin, safety instructions for specific uses and care instructions; and

(ii) in the case of footwear: the predominant materials of the main parts, safety instructions for specific uses and country of origin;

(b) shall not establish:

(i) requirements regarding the physical characteristics or design of a label without prejudice to any measures such Party takes to protect consumers from misleading advertising;

(ii) an obligation to permanently label garments which, due to their size, makes this either difficult or diminishes their value; and

(iii) for goods sold in pairs, an obligation to label both parts when these are of the same material and design.

3. The Parties shall apply this Article at the latest one year from the entry into force of this Agreement.

Article 82. Trade Related Technical Assistance and Capacity Building

The Parties recognise the importance of trade related technical assistance and capacity building in facilitating the implementation of the provisions of this Chapter, which should focus on, among others:

(a) capacity building of the national institutions, their technical infrastructure and equipment, and training of human resources;

(b) promoting and facilitating participation in international bodies relevant to this Chapter; and

(c) fostering relations between the standardisation, technical regulation, conformity assessment, accreditation, metrology, border control and market surveillance bodies of the Parties.

Article 83. Sub-committee on Technical Barriers to Trade

1. The Parties establish a Sub-committee on Technical Barriers to Trade, comprising representatives of each Party.

2. The Sub-committee shall:

(a) follow up and evaluate the implementation and administration of, and compliance with, this Chapter;

(b) address adequately any issue that a Party raises relating to this Chapter and the TBT Agreement;

(c) contribute to the identification of priorities on cooperation matters and the technical assistance programmes in the area of standards, technical regulations, conformity assessment procedures, accreditation, metrology, border control and market surveillance and examine the progress or results obtained;

(d) exchange information on the work carried out in non-governmental, regional and multilateral fora involved in activities relating to standards, technical regulations and conformity assessment procedures;

(e) upon request of a Party, consult on any matter arising under this Chapter and the TBT Agreement;

(f) establish, when required to achieve the objectives of this Chapter, working groups to deal with specific matters relating to this Chapter and TBT Agreement, clearly defining the scope and responsibilities of those working groups;

(g) facilitate, as appropriate, dialogue and cooperation between the regulators in accordance with this Chapter;

(h) pursuant to Article 75 subparagraph 1(b) of this Chapter, draw up a work programme in matters of mutual interest to the Parties, which shall be revised periodically;

(i) explore all other matters relating to this Chapter which may help to improve access to the markets of the Parties;

(j) revise this Chapter in light of any developments under the TBT Agreement and of the decisions or recommendations of the WTO Committee on Technical Barriers to Trade, and make suggestions on possible amendments to this Chapter;

(k) inform, if deemed appropriate, the Trade Committee about the implementation of this Chapter; and

(l) take any other action which the Parties consider would assist them in the implementation of this Chapter and of the TBT Agreement and in facilitating trade.

3. To facilitate the implementation of this Chapter, the representative of each Party in the Sub-committee shall be responsible for coordinating with the institutions of the central government, local public institutions, non-governmental institutions and appropriate persons in the territory of such Party; and, upon request of another Party, invite them to take part in the meetings of the Sub-committee. The representative of the Parties shall communicate on any matter relating to this Chapter.

4. Unless the Parties agree otherwise, the consultations pursuant to subparagraph 2(e) shall constitute consultations under Article 301, provided they fulfil the requirements established in paragraph 9 of that Article.

5. The Sub-committee may meet in sessions where the EU Party and one signatory Andean Country participate, regarding matters which relate exclusively to the bilateral relationship between the EU Party and such signatory Andean Country. If another signatory Andean Country expresses interest in the matter to be discussed in such session, it may participate in the session subject to prior agreement of the EU Party and the signatory Andean Country concerned.

6. Unless the Parties agree otherwise, the Sub-committee shall meet at least once a year. Meetings may be held in person, or by other means agreed by the Parties.

Article 84. Exchange of Information

1. Any information or explanation provided at the request of a Party in accordance with the provisions of this Chapter shall be provided in print or electronic form within 60 days, which may be extended with prior justification by the reporting Party.

2. As regards the enquiries which the enquiry points should be prepared to answer and the handling and processing of such requests, in accordance with Article 10 of the TBT Agreement or with this Chapter, the Parties shall apply the recommendations of the WTO Committee on Technical Barriers to Trade adopted on 4 October 1995.

Chapter 5. Sanitary and Phytosanitary Measures

Article 85. Objectives

The objectives of this Chapter are to:

(a) protect human, animal or plant life and health in the territory of the Parties, while facilitating trade between the Parties in the field of sanitary and phytosanitary measures (hereinafter referred to as "SPS measures");

(b) collaborate for the further implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as the "SPS Agreement");

(c) ensure that SPS measures do not constitute unjustified barriers to trade between the Parties; (d) develop mechanisms and procedures aimed at efficiently resolving the problems arising between the Parties as a consequence of the development and implementation of SPS measures;

(e) reinforce communication and collaboration between the competent authorities of the Parties on sanitary and phytosanitary matters;

(f) facilitate the implementation of the special and differential treatment, taking into account the asymmetries between the Parties.

Article 86. Rights and Obligations

The Parties reaffirm their rights and obligations under the SPS Agreement. The Parties are also subject to the provisions of this Chapter.

Article 87. Scope of Application

1. This Chapter shall apply to any SPS measure that may, directly or indirectly, affect trade between the Parties.

2. This Chapter shall not apply to the standards, technical regulations and conformity assessment procedures defined in the TBT Agreement, except when they refer to SPS measures.

3. Additionally, this Chapter shall apply to the collaboration between the Parties on animal welfare matters.

Article 88. Definitions

1. For the purposes of this Chapter, the definitions of Annex A to the SPS Agreement shall apply.

2. The Parties may agree on other definitions for the application of this Chapter, taking into consideration the glossaries and definitions of the relevant international organisations.

Article 89. Competent Authorities

For the purposes of this Chapter, the competent authorities of each Party are those listed in Appendix 1 of Annex VI (Sanitary and Phytosanitary Measures). The Parties shall inform each other of any change of these competent authorities.

Article 90. General Principles

1. SPS measures shall not be used as unjustified barriers to trade between the Parties.

2. The procedures established under the scope of this Chapter shall be applied:

(a) in a transparent manner,

(b) without undue delays; and

(c) in conditions and requirements, including costs, which should be no higher than the actual cost of the service and be equitable in relation to any fees charged on like domestic products of the Parties.

3. The Parties shall use neither the procedures mentioned in paragraph 2 nor the requests for additional information in order to delay the access of imported products into their markets without scientific and technical justification.

Article 91. Import Requirements

1. The general import requirements of a Party shall apply to products of another Party.

2. Each Party shall ensure that products exported to another Party meet the sanitary and phytosanitary requirements of the importing Party.

3. The importing Party shall ensure that its import conditions are applied in a proportionate and non-discriminatory manner.

4. Any modification to the import requirements of a Party has to consider the establishment of a transitional period, according to the nature of the modification, in order to avoid the interruption of the trade flow of products and to allow the exporting Party to adjust its procedures to such modification.

5. When a risk assessment is included by an importing Party in its import requirements, that Party will immediately initiate this assessment and inform the exporting Party of the period of time required for such assessment.

6. When the importing Party has concluded that the products of an exporting Party meet its sanitary and phytosanitary import requirements, such Party will authorise the import of such products within 90 working days (17) following the date in which such conclusion was reached.

7. Inspection fees may only cover the costs incurred by the competent authority when performing import checks. Inspection fees shall be equitable in relation to the fees charged for the inspection of like domestic products.

8. The importing Party shall inform an exporting Party as soon as possible of any modification concerning fees, including the reasons for such modification.

(17) For the purposes of this Chapter, ‘working days’ means working days in the Party to which the deadline applies.

Article 92. Import Procedures

1. For the import of animal products, the exporting Party shall inform the importing Party of the list of its establishments

meeting the requirements of the importing Party.

2. Upon request of an exporting Party accompanied by the appropriate guarantees, the importing Party shall approve establishments referred to in paragraph 3 of Appendix 2 of Annex VI (Sanitary and Phytosanitary Measures) which are located in the territory of the exporting Party without prior inspection of individual establishments. Such approval shall be consistent with the conditions and provisions set out in Appendix 2 of Annex VI (Sanitary and Phytosanitary Measures) and is limited to those categories of products for which imports are authorised.

3. Except when additional information is required, the importing Party shall, in accordance with its applicable legal procedures, adopt the necessary legislative or administrative measures to allow imports of products from the establishments referred to in paragraph 2, within 40 working days following the date of receipt of the request referred to in paragraph 2.

4. The Sub-committee on Sanitary and Phytosanitary Measures (hereinafter referred to as the "SPS Sub-committee") may modify the requirements and provisions for approval of establishments for products of animal origin of the Parties. The corresponding modification to Appendix 2 of Annex VI (Sanitary and Phytosanitary Measures) shall be adopted by the Trade Committee.

5. The importing Party will regularly submit a record of consignment rejections, including information about the non-conformities upon which the rejections were based.

Article 93. Verifications

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party, within the scope of this Chapter, shall have the right to:

(a) carry out, in accordance with the Guidelines set out under Appendix 3 of Annex VI (Sanitary and Phytosanitary Measures), verification of all or part of the control system of the authorities of another Party; the expenses of such verification shall be borne by the Party carrying out the verification; and

(b) receive information from the other Parties about their control system and of the results of controls carried out under that system.

2. A Party carrying out a verification under this Article in the territory of another Party shall provide that Party with the results and conclusions of such verification.

3. When the importing Party decides to carry out a verification visit to an exporting Party, such visit shall be notified to the exporting Party at least 60 working days before such verification is to be carried out, except in cases of emergency or where the Parties concerned agree otherwise. Any modification to such visit shall be agreed by the Parties concerned.

Article 94. Measures Linked to Animal and Plant Health

1. The Parties shall recognise the concept of pest- and disease-free areas, and areas of low pest- and low disease-prevalence, in accordance with the SPS Agreement, and the standards, guidelines or recommendations of the World Organization on Animal Health (hereinafter referred to as "OIE") and of the International Plant Protection Convention (hereinafter referred to as "IPPC").

2. Pursuant to paragraph 1, the SPS Sub-committee shall establish an appropriate procedure for the recognition of pest- and disease-free areas, and areas of low pest- and low disease-prevalence, taking into account any relevant international standard, guideline or recommendation. Such procedure will include situations related to outbreaks and reinfestations.

3. When determining the areas referred to in paragraphs 1 and 2, the Parties shall consider factors such as geographical location, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls in that area.

4. The Parties shall establish close cooperation on the determination of pest- and disease-free areas, and areas of low pest- and disease prevalence, with the objective of acquiring confidence in the procedures followed by each Party for the determination of pest- and disease-free areas, and areas of low pest- and low disease prevalence.

5. When determining pest- and disease-free areas, and areas of low pest and disease prevalence, whether for the first time or after an outbreak of an animal disease or a re-introduction of a plant pest, the importing Party shall in principle base its own determination of the animal and plant health status of the exporting Party or parts thereof, on the information provided by the exporting Party in accordance with the SPS Agreement and OIE and IPPC standards, and take into consideration the determination made by the exporting Party.

6. In the event that an importing Party does not recognise the areas determined by an exporting Party as a pest- and disease-free areas or areas of low pest- and disease prevalence, the importing Party, upon request of the exporting Party, shall provide the information on the basis on which such decision was made, and/or hold consultations, as soon as possible, in order to assess a possible alternative agreed solution.

7. The exporting Party shall provide sufficient evidence thereof in order to objectively demonstrate to the importing Party that the areas in question are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, as the case may be. For this purpose, upon request, such exporting Party shall grant reasonable access to the importing Party for inspection, testing and other relevant procedures.

8. The Parties recognise the principle of compartmentalisation of the OIE and the principle of pest-free production sites of the IPPC. The SPS Sub-committee will assess any future recommendation of the OIE or the IPPC on the matter and will make recommendations accordingly.

Article 95. Equivalence

The SPS Sub-committee may develop provisions on equivalence and will make recommendations to the Trade Committee accordingly. This Sub-committee shall also establish the procedure for the recognition of equivalence.

Article 96. Transparency and Exchange of Information

1. The Parties shall:

(a) pursue transparency as regards SPS measures applicable to trade and, in particular, to the SPS requirements applied to imports of the other Parties;

(b) enhance mutual understanding of the SPS measures of each Party and their application;

(c) exchange information on matters related to the development and application of SPS measures, including the progress on new available scientific evidence, that affect or may affect trade between the Parties, with a view to minimising negative trade effects;

(d) communicate, upon the request of a Party and within 15 working days following the date of such request, the requirements that apply for the import of specific products, including if a risk assessment is needed;

(e) communicate, upon request of a Party the status of the procedure for the authorisation of the import of specific products.

2. The contact points of the Parties for the exchange of information referred to in this Article are listed in Appendix 4 of Annex VI (Sanitary and Phytosanitary Measures). Information shall be sent by post, fax or e-mail. Information sent by e-mail may be signed electronically and shall only be sent between the contact points.

3. When the information referred to in this Article has been made available by notification to the WTO in accordance with the relevant rules, or on any of the official, publicly accessible and fee free web-sites of the Party concerned, listed in Appendix 4 of Annex VI (Sanitary and Phytosanitary Measures), the information exchange shall be considered to have taken place.

Article 97. Notification and Consultation

1. Each Party shall notify in writing to the other Parties within two working days, of any serious or significant public, animal or plant health risk, including any food emergencies.

2. Notifications referred to in paragraph 1 shall be made to the contact points listed in Appendix 4 of Annex VI (Sanitary and Phytosanitary Measures). The Parties shall inform each other in accordance with Article 96 of any changes in the contact points. The written notifications referred to in paragraph 1 shall be made by post, fax or e-mail.

3. Where a Party has serious concerns regarding a risk to public, animal or plant health, affecting products being traded between the Parties, a Party may request consultations with the exporting Party regarding the situation. Such consultations shall take place as soon as possible. In those consultations, each Party shall endeavour to provide all the information necessary to avoid disruption in trade.

4. Consultations referred to in paragraph 3 may be held by e-mail, video or audio conference, or any other technological means available to the Parties. The Party requesting the consultations shall ensure the preparation of the minutes of such

consultations.

Article 98. Emergency Measures

1. The importing Party may adopt, on the basis of serious public, animal or plant health risk and without previous notification, provisional and transitional measures necessary for the protection of public, animal or plant health. For consignments in transport between the Parties, such importing Party shall consider the most suitable and proportionate solution in order to avoid unnecessary disruptions to trade.

2. The Party adopting measures under paragraph 1 shall inform the other Parties as soon as possible, and in any case no later than one working day following the date of the adoption of the measure. The other Parties may request any information related to the sanitary situation of the Party adopting the measure, as well as to the measure itself. The Party adopting the measure shall answer as soon as the requested information is available.

3. Upon request of a Party, and in accordance with the provisions of Article 97, the Parties shall hold consultations regarding the situation within 15 working days following the date of receipt of the request for consultations. These consultations will be carried out in order to avoid unnecessary disruptions to trade. Options for the facilitation of the implementation or the replacement of the measures may be considered.

Article 99. Alternative Measures

1. Upon request of an exporting Party, and with respect to measures adopted by the importing Party affecting trade (including the establishment of specific limits for additives, residues and contaminants), the Parties concerned shall enter into consultations in accordance with Article 97 in order to agree on additional import conditions or alternative measures to be applied by the importing Party. Such additional import conditions or alternative measures may, when appropriate, be based on international standards or on measures of the exporting Party that ensure an equivalent level of protection as that of the importing Party. Article 95 shall not apply to these measures.

2. Upon request of the importing Party, an exporting Party shall provide all relevant information required by the legislation of the importing Party, including the results of their official laboratories or any other scientific information in order to be evaluated by the appropriate scientific instances. If agreed, the importing Party shall take the legislative or administrative measures to allow imports on the basis of such agreement.

3. Where relevant scientific evidence is insufficient, a Party may provisionally adopt SPS measures on the basis of available pertinent information. In such case, the Parties shall seek to obtain the additional information necessary for a more precise risk assessment, in order to allow the importing Party to review the SPS measure accordingly.

Article 100. Special and Differential Treatment

In application of Article 10 of the SPS Agreement, when a signatory Andean Country has identified difficulties with a proposed measure notified by the EU Party, the signatory Andean Country may request, in its comments submitted to the EU Party pursuant to Article 7 of the SPS Agreement, an opportunity to discuss the issue. The Parties concerned shall enter into consultations in order to agree on:

(a) alternative import conditions to be applied by the importing Party; and/or

(b) technical assistance according to Article 101; and/or (c) a transition period of six months, which could be exceptionally extended for another period of no longer than six months.

Article 101. Technical Assistance and Strengthening of the Trade Capacities

1. In accordance with the provisions of Title XIII (Technical Assistance and Trade- Capacity Building), the Parties agree to strengthen cooperation so as to contribute to this Chapter being implemented and made the most of with the aim of optimising its results and for the expanding opportunities and obtaining the greatest benefits for the Parties in relation to public health, animal and plant health and food safety. This cooperation shall be developed within the legal and institutional framework governing cooperation relations between the Parties.

2. To achieve these objectives, the Parties agree to attach particular importance to cooperation needs identified by the SPS Sub-committee and to transmit such information, as provided in Title XIII (Technical Assistance and Trade-Capacity Building). This Sub-committee may also review the mentioned needs.

Article 102. Collaboration on Animal Welfare

The SPS Sub-committee shall promote collaboration on animal welfare matters between the Parties.

Article 103. Sub-committee on Sanitary and Phytosanitary Measures

1. The Parties establish a Sub-committee on Sanitary and Phytosanitary Measures as a forum to ensure and monitor the implementation of this Chapter and to consider any matter that could affect compliance with its provisions. The SPS Sub-committee may review this Chapter and make recommendations accordingly.

2. The SPS Sub-committee shall comprise representatives designated by each Party. This Sub-committee shall meet on ordinary session at least once a year on a mutually agreed date and venue, and will hold special sessions upon request of any Party. The SPS Sub-committee shall hold its first ordinary session within the first year following the entry into force of this Agreement. The SPS Sub-committee shall adopt its working procedures at this first meeting. The agenda shall be agreed by the Parties before the meetings. The Sub-committee may also meet by video and audio conference.

3. The SPS Sub-committee shall:

(a) develop and monitor the implementation of this Chapter;

(b) provide a forum for discussing problems arising from the application of SPS measures and the application of this Chapter, and identify possible solutions;

(c) discuss the need to establish joint study programmes, in particular in relation to the establishment of specific limits;

(d) identify cooperation needs;

(e) conduct the consultations established in Article 104 concerning the settlement of disputes arising under this Chapter;

(f) conduct the consultations established in Article 100 of this Chapter concerning special and differential treatment; and

(g) perform any other function mutually agreed between the Parties.

4. The SPS Sub-committee may establish ad hoc working groups in order to undertake specific tasks and shall establish their functions and working procedures.

Article 104. Dispute Settlement

1. When a Party considers that an SPS measure of another Party is or might be contrary to the obligations under this Chapter, or that another Party has breached any obligation covered by this Chapter related to an SPS measure, such Party may request technical consultations in the SPS Sub-committee. The competent authorities identified in Appendix 1 of Annex VI (Sanitary and Phytosanitary Measures) will facilitate these consultations.

2. Unless otherwise agreed by the Parties to the dispute, when a dispute has been subject to consultations within the SPS Sub-committee according to paragraph 1, such consultations shall replace the consultations foreseen in Article 301 provided that those consultations meet the requirements established in paragraph 9 of that Article. Consultations in the SPS Sub-committee shall be deemed concluded within 30 days following the date of submission of the request, unless the consulting Parties agree to continue with the consultations. These consultations may be held via videophone conference, videoconference, or any other technological means mutually agreed by the consulting Parties.

Chapter 6.

Article 105. Movement of Goods

1. The Parties recognise the different levels reached by regional integration processes within the European Union, on the one hand, and between the signatory Andean Countries within the Andean Community, on the other. In this regard, the Parties will act with a view to moving towards the goal of creating conditions conducive to the free movement of goods from other Parties among their respective territories. In this respect:

(a) products originating in a signatory Andean Country shall benefit from free movement of goods within the territory of the European Union under the conditions established by the Treaty on the Functioning of the European Union for free movement of goods originating in third countries;

(b) subject to the provisions of the Andean Subregional Integration Agreement, (hereinafter referred to as the "Cartagena Agreement"), regarding movement of goods, the signatory Andean Countries will grant each other a treatment no less favourable than that granted to the EU Party pursuant to this Agreement. This obligation is not subject to Title XII (Dispute Settlement);

(c) having regard to Article 10, the signatory Andean Countries will make their best efforts to facilitate the movement of goods originating in the European Union between their territories and to avoid duplication of procedures and controls.

2. In addition to paragraph 1:

(a) on Customs matters, the signatory Andean Countries will apply to goods originating in the European Union and arriving from another signatory Andean Country, the most favourable customs procedures applicable to goods from other signatory Andean Countries;

(b) on Technical Barriers to Trade matters:

(i) the signatory Andean Countries will allow goods originating in the European Union to benefit from the harmonised standards, technical regulations and conformity assessment procedures applicable to trade between the signatory Andean Countries;

(ii) in areas of interest, the signatory Andean Countries will make their best efforts to foster the gradual harmonisation of standards, technical regulations and conformity assessment procedures;

(c) on Sanitary and Phytosanitary measures matters, the signatory Andean Countries will allow goods originating in the European Union to benefit from the harmonised procedures and requirements applied to trade. The SPS Subcommittee will examine the application of this subparagraph.

3. In the event that all the Member Countries of the Andean Community become Parties to this Agreement, the signatory Andean Countries will examine this new situation and propose to the EU Party the appropriate measures to improve the conditions of movement of goods originating in the European Union between the Member Countries of the Andean Community and, in particular, to avoid the duplication of procedures, customs duties and other charges, inspections and controls.

4. Pursuant to paragraph 3, the signatory Andean Countries will make their best efforts to foster harmonisation of their legislation and procedures on technical regulations and SPS measures, and to promote the harmonisation or mutual recognition of their controls and inspections.

5. In accordance with paragraph 1, the Parties shall develop cooperation mechanisms, taking into account their needs and realities, within the legal and institutional framework governing cooperation relationships between the Parties.

Chapter 7. Exceptions

Article 106. Exceptions to the Title on Trade In Goods

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on trade in goods between the Parties, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals or to maintain public order (18);

(b) necessary to protect human, animal or plant life or health, including those environmental measures necessary to this effect;

(c) relating to the importations or exportations of gold or silver;

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated in conformity with Article 27, the protection of intellectual property rights and the prevention of deceptive practices;

(e) relating to the products of prison labour;

(f) imposed for the protection of national treasures of artistic, historic or archaeological value;

(g) relating to the conservation of living and non-living exhaustible natural resources, if such measures are made effective in conjunction with restrictions on domestic production or consumption;

(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the Parties and not disapproved by them or which is itself so submitted and not so disapproved (19);

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan; provided that such restrictions shall not operate to increase the exports of, or the protection afforded to, such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination; and

(j) essential to the acquisition or distribution of products in general or local short supply; provided that any such measures shall be consistent with the principle that all Parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

2. The Parties understand that when a Party intends to adopt any measure under subparagraphs 1(i) and 1(j), such Party shall provide the other Parties with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to resolve the situation of the Party intending to adopt the measure. If no agreement is reached within 30 days, such Party may apply measures under subparagraphs 1(i) and 1(j) to the exportation of the product concerned. However, where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to adopt the measures may do so and shall inform the other Parties as soon as possible.

(18) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of the society.

(19) The exception provided for in this subparagraph extends to any commodity agreement which conforms to the principles approved by the Economic and Social Council in its resolution 30 (IV) of 28 March 1947.

Title IV. Trade In Services, Establishment and Electronic Commerce

Chapter 1. General Provisions

Article 107. Objective and Scope of Application

1. The Parties, reaffirming their commitments under the WTO Agreement, and with a view to facilitating their economic integration, sustainable development and continuous integration into the global economy, and considering the differences in the level of development of the Parties, hereby establish the necessary provisions for the progressive liberalisation of establishment and trade in services and for cooperation on electronic commerce.

2. Nothing in this Title shall be construed to require any Party to privatise public undertakings or to impose any obligation with respect to government procurement.

3. The provisions of this Title shall not apply to subsidies granted by a Party (20).

4. The provisions of this Title shall not apply to services supplied in the exercise of governmental authority.

5. Subject to the provisions of this Title, each Party retains the right to exercise its powers and to regulate and introduce new regulations in order to meet legitimate public policy objectives.

6. This Title shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

7. Nothing in this Title shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment in this Title and its Annexes (21).

(20) For the purposes of this paragraph, the term ‘subsidies’ includes government-supported loans, guarantees, and insurance.

(21) The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

Article 108. Definitions

For the purposes of this Title:

- "economic integration agreement" means an agreement substantially liberalising trade in services and establishment pursuant to WTO rules;

- "juridical person of a Party" means a juridical person set up in accordance with the laws of that Party and having its registered office, central administration or principal place of business in the territory of that Party; in case a juridical person has only its registered office or central administration in the territory of a Party, it shall not be considered as a juridical person of that Party, unless its operations have a real and continuous link with the economy of that Party (22);

- "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

- "measures adopted or maintained by a Party" means measures adopted or maintained by:

(a) central, regional or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

- "natural person of a Party" means a natural person that has the nationality of a Member State of the European Union or of a signatory Andean Country according to their respective domestic legislation (23);

- "services" includes any service in any sector, except services supplied in the exercise of governmental authority;

- "services supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;

- "service supplier of a Party" means any natural or juridical person of a Party that seeks to supply or supplies a service;

- "supply of a service" includes the production, distribution, marketing, sale and delivery of a service.

(22) Shipping companies established outside of the European Union or of the signatory Andean Countries but controlled by nationals of a Member State of the European Union or of a signatory Andean Country, respectively, shall also benefit from the provisions of this Title, if their vessels are registered in accordance with the respective legislation of the Member State of the European Union or signatory Andean Country and carry the flag of a Member State of the European Union or a signatory Andean Country.

(23) For purposes of this Title, a natural person of a Party having a dual nationality of a Member State of the European Union and a signatory Andean Country shall be considered exclusively a national of the Party in which he/she accredits his/her dominant and effective nationality. For these purposes, dominant and effective nationality of a Party shall be understood as the nationality of the Party in which the natural person has stronger ties, considering factors such as, among others, his/her habitual residence, his/her family links, his/her place of taxation or the place where he/she exercises his/her political rights.

Article 109. Working Groups

To the extent necessary and justified, the Trade Committee may establish a working group with the aim of performing, among others, the following tasks:

(a) discussing regulatory issues concerning establishment, trade in services and electronic commerce;

(b) proposing guidelines and strategies enabling the signatory Andean Countries to become a safe harbour for the protection of personal data. To this end, the working group shall adopt a cooperation agenda that shall define priority aspects for accomplishing that purpose, especially regarding the respective homologation processes of data protection

systems;

(c) seeking the necessary mechanisms to address the aspects covered under Article 162;

(d) recommending mechanisms to assist Micro and SMEs in overcoming obstacles faced by them in the use of electronic commerce;

(e) improving the security of electronic transactions and electronic government, among others;

(f) encouraging the participation of the private sector in training and adoption of codes of conduct, contract models, guidelines and compliance mechanisms for electronic commerce, together with active participation in fora organised between the Parties;

(g) establishing cooperation mechanisms on digital accreditation and certification for electronic transactions and mutual recognition of digital certificates; and

(h) participating actively in regional and multilateral fora to promote the development of electronic commerce.

Chapter 2. Establishment

Article 110. Definitions

For the purposes of this Chapter:

- "branch of a juridical person" means a place of business without legal personality, which:

(a) has the appearance of permanence such as the extension of a parent body:

(b) has a management; and

(c) is materially equipped to negotiate business with third parties; therefore third parties, although knowing that there will, if necessary, be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension;

- "economic activity" does not include activities carried out in the exercise of governmental authority, i.e. activities carried out neither on a commercial basis nor in competition with one or more economic operators;

- "establishment" means any type of business or professional establishment (24) through:

(a) the constitution, acquisition or maintenance of a juridical person (25); or

(b) the creation or maintenance of a branch or representative office; within the territory of a Party for the purpose of performing an economic activity;

- "investor of a Party" means any natural or juridical person of that Party that seeks, through concrete actions to perform, is performing or has performed an economic activity in another Party through setting up an establishment;

- "measures of a Party affecting establishment" include measures with respect to all activities covered by the definition of establishment;

- "subsidiary of a juridical person of a Party" means a juridical person which is effectively controlled by another juridical person of that Party (26).

(24) The term ‘business or professional establishment’ includes the establishment in any productive economic activity, whether industrial or commercial, relating to the production of goods and supply of services.

(25) The terms ‘constitution’ and ‘acquisition’ of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

(26) A juridical person is controlled by another juridical person if the latter has the power to name a majority of its directors or otherwise to legally direct its actions.

Article 111. Scope of Application

This Chapter applies to measures adopted or maintained by the Parties affecting establishment (27) in any economic activity, with the exception of:

(a) mining, manufacturing and processing of nuclear materials;

(b) production of or trade in arms, munitions and war material;

(c) audio-visual services;

(d) national maritime cabotage (28);

(e) processing, disposition and waste of toxic waste, and

(f) domestic and international air transport services, whether scheduled or non-scheduled and services directly related to the exercise of traffic rights, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(ii) the selling and marketing of air transport services;

(iii) computer reservation system (CRS) services; and

(iv) groundhandling services and airport operation services.

(27) For greater certainty, and without prejudice to the obligations set out therein, this Chapter does not cover provisions on investment protection, such as provisions specifically relating to expropriation and fair and equitable treatment, nor does it cover investor-State dispute settlement procedures.

(28) Without prejudice to the scope of activities which may be considered as cabotage under the relevant domestic legislation, national cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a signatory Andean Country or a Member State of the European Union and another port or point located in the same signatory Andean Country or Member State of the European Union, including on its continental shelf, and traffic originating and terminating in the same port or point located in a signatory Andean Country or a Member State of the European Union.

Article 112. Market Access

1. With respect to market access through establishment, each Party shall accord to establishments and investors of another Party treatment no less favourable than that provided for in the specific commitments contained in Annex VII (List of Commitments on Establishment).

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex VII (List of Commitments on Establishment), are defined as:

(a) limitations on the number of establishments whether in the form of numerical quotas, monopolies, exclusive rights or other establishment requirements such as economic needs test;

(b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test (29);

(d) limitations on the total number of natural persons that may be employed in a particular economic activity or that an establishment may employ and who are necessary for, and directly related to, the performance of an economic activity in the form of numerical quotas or the requirement of an economic needs test;

(e) limitations on the participation of foreign capital in terms of a maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; and

(f) measures which restrict or require specific types of establishment (subsidiary, branch, representative office) or joint ventures through which an investor of another Party may perform an economic activity (30).

(29) Subparagraphs 2(a), 2(b) and 2(c) do not cover measures taken in order to limit the production of an agricultural product.

(30) Each Party may require that in the case of constitution of juridical person under its own law, investors must adopt a specific legal form. To the extent that such requirement is applied in a non-discriminatory manner, it does not need to be specified in Annex VII (List of commitments on establishment) in order to be maintained or adopted by the Parties.

Article 113. National Treatment

1. In sectors for which market access commitments are listed in Annex VII (List of Commitments on Establishment) by Colombia, and subject to any conditions and qualifications set out therein, Colombia shall grant to establishments and investors of the EU Party, with respect to all measures affecting establishment, treatment no less favourable than that it accords to its own like (31) establishments and investors.

2. In the sectors for which market access commitments are listed in Annex VII (List of Commitments on Establishment) by Peru, and subject to any conditions and qualifications set out therein, Peru shall grant to establishments and investors of the EU Party, with respect to all measures affecting establishment, treatment no less favourable than that it accords in like circumstances to its own establishments and investors (32).

3. In the sectors for which market access commitments are listed in Annex VII (List of Commitments on Establishment) by the EU Party, and subject to any conditions and qualifications set out therein, the EU Party, with respect to all measures affecting establishment, shall grant to establishments and investors of the signatory Andean Countries treatment no less favourable than that it accords to its own like establishments and investors.

3a. In the sectors for which market access commitments are listed in Annex VII (List of Commitments on Establishment) by Ecuador, and subject to any conditions and qualifications set out therein, Ecuador shall grant to establishments and investors of the EU Party, with respect to all measures affecting establishment, treatment no less favourable than that it accords to its own like establishments and investors.

4. The specific commitments assumed under this Article shall not be construed to require any Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant investors.

(31) For greater certainty, the term 'like' is without prejudice of the term 'like circumstances' that Colombia has agreed or agrees in other international agreements.

(32) For greater certainty, the rights which can be derived for the services and service suppliers of the EU Party from the obligations of Peru under the GATS remain fully enforceable within the framework of the WTO, particularly as concerns the application of principle of 'like services and service suppliers' as included in Article XVII of the GATS.

Article 114. List of Commitments

Sectors committed by each Party pursuant to this Chapter, as well as any reservation or limitation on market access and/or national treatment applicable to establishments and investors of another Party in those sectors are listed in Annex VII (List of Commitments on Establishment).

Article 115. Other Agreements

1. Nothing in this Title shall be construed as limiting the rights and obligations of the Parties and of their investors established in any existing or future international agreement relating to investment to which a Member State of the European Union and a signatory Andean Country are parties.

2. Notwithstanding paragraph 1, any dispute settlement mechanism established under any existing or future international agreement relating to investment to which the European Union, a Member State of the European Union or a signatory Andean Country is a party shall not be applicable to alleged breaches of this Chapter.

Article 116. Investment Promotion and Review

1. With a view to a progressive liberalisation of investments, the European Union and the signatory Andean Countries shall seek to promote an environment attractive for reciprocal investment within their respective spheres of competence.

2. The promotion referred to in paragraph 1 shall lead to cooperation that shall include, among others, the review of the investment legal framework, the investment environment and the flow of investments between the Parties, consistent with their commitments under international agreements. Such review shall take place no later than five years following the entry into force of this Agreement and subsequently at regular intervals.

Chapter 3. Cross-border Supply of Services

Article 117. Definitions

For the purposes of this Chapter:

- "cross-border supply of services" means the supply of a service:

(a) from the territory of a Party into the territory of another Party (Mode 1); and

(b) in the territory of a Party to the service consumer of another Party (Mode 2);

- "measure by a Party affecting cross-border supply" includes measures in respect of:

(a) the purchase, payment or use of a service; and

(b) the access to and use of, in connection with the cross-border supply of a service, services which are required by that Party to be offered to the public generally.

Article 118. Scope of Application

This Chapter applies to measures of the Parties affecting the cross-border supply of all services sectors, with the exception of:

(a) audiovisual services;

(b) national maritime cabotage (33), and;

(c) national and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(ii) the selling and marketing of air transport services;

(iii) computer reservation system (CRS) services; and

(iv) groundhandling services and airport operation services.

(33) Without prejudice to the scope of activities which may be considered as cabotage under the relevant domestic legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a signatory Andean Country or a Member State of the European Union and another port or point located in the same signatory Andean Country or Member State of the European Union, including on its continental shelf, as well as traffic originating and terminating in the same port or point located in a signatory Andean Country or a Member State of the European Union.

Article 119. Market Access

1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of another Party treatment no less favourable than that provided for in the specific commitments listed in Annex VIII (List of Commitments on Cross-Border Supply of Services).

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt

either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex VIII (List of Commitments on Cross-Border Supply of Services), are defined as:

(a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; and

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test (34).

(34) Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

Article 120. National Treatment

1. In the sectors where market access commitments are listed in Annex VIII (List of Commitments on Cross-Border Supply of Services) by Colombia, and subject to any conditions and qualifications set out therein, Colombia shall grant to services and service suppliers of the EU Party, with respect to all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

2. In the sectors where market access commitments are listed in Annex VIII (List of Commitments on Cross-Border Supply of Services) by Peru, and subject to any conditions and qualifications set out therein, Peru shall grant to services and service suppliers of the EU Party, with respect to all measures affecting the cross-border supply of services, treatment no less favourable than that it accords in like circumstances to its own services and service suppliers (35).

3. In the sectors where market access commitments are listed in Annex VIII (List of Commitments on Cross-Border Supply of Services) by the EU Party, and subject to any conditions and qualifications set out therein, the EU Party shall grant to services and service suppliers of the Signatory Andean Countries, with respect to all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

4. The specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantage resulting from the foreign character of the relevant services or services suppliers.

(35) For greater certainty, the rights which can be derived for the services and service suppliers of the EU Party from the obligations of Peru under the GATS remain fully enforceable within the framework of the WTO, particularly as concerns the application of principle of 'like services and service suppliers' as included in Article XVII of the GATS.

Article 121. List of Commitments

Sectors committed by each Party pursuant to this Chapter, as well as any reservation or limitation on market access and/ or national treatment applicable to services and services suppliers of another Party in such sectors are listed in Annex VIII (List of Commitments on Cross-Border Supply of Services).

Chapter 4. Temporary Presence of Natural Persons for Business Purposes

Article 122. Scope of Application

This Chapter applies to any measure of a Party concerning the entry and temporary stay in its territory of key personnel, graduate trainees, business service sellers, contractual services suppliers, independent professionals and short term visitors for business purposes, in accordance with Article 107, paragraph 6.

Article 123. Definitions

For the purposes of this Chapter:

- "business services sellers" means natural persons who are representatives of a service supplier of a Party, seeking

temporary entry into the territory of another Party, for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. Business services sellers do not engage in direct sales to the general public and do not receive remuneration from a source located within the host Party;

- "business visitors" means natural persons working in a senior position who are responsible for setting up an establishment. Business visitors do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party;

- "contractual services suppliers" means natural persons employed by a juridical person of a Party which has no establishment in the territory of another Party and which has concluded with a final consumer in the latter Party a bona fide contract (other than through an agency as defined by the code 872 the United Nations Central Product Classifications (hereinafter referred to as "CPC") to supply services requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services (36);

- "graduate trainees" means natural persons who have been employed by a juridical person of a Party or its branch for at least one year, hold a university degree and are temporarily transferred to an establishment of the juridical person in the territory of another Party, for career development purposes or to obtain training in business techniques or methods (37);

- "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of another Party and who have concluded a bona fide contract (other than through an agency as defined by the CPC code 872) to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services (38);

- "intra-corporate transferees" means natural persons who have been employed by a juridical person or its branch or have been partners in it for at least one year and who are temporarily transferred to an establishment that may be a subsidiary, branch or parent company of the juridical person in the territory of another Party. The natural person concerned shall belong to one of the following categories:

(a) "managers" means persons working in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including:

(i) directing the establishment or a department or sub-division thereof;

(ii) supervising and controlling the work of other supervisory, professional or managerial employees;

(iii) having the authority personally to recruit and dismiss, or recommend recruiting, dismissing or other personnel actions; or;

(b) "specialists" means persons working within a juridical person who possess uncommon knowledge essential to the activity, research equipment, techniques, processes, procedures or management of the establishment. In assessing such knowledge, account shall be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession (39);

- "key personnel" means natural persons employed by a juridical person of one Party other than a non-profit organisation (40) and who are responsible for the setting-up or appropriate control, management and operation of an establishment, comprising "business visitors" responsible for setting up an establishment and "intra-corporate transferees"; and

- "qualifications" means diplomas, certificates and other evidence (of formal qualification) issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of professional training.

(36) The service contract shall comply with the laws, regulations and requirements of the Party where the contract is executed.

(37) The recipient establishment may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For Austria, Czech Republic, Germany, France, Spain and Hungary, training must be linked to the university degree which has been obtained.

(38) The service contract shall comply with the laws, regulations and requirements of the Party where the contract is executed.

(39) The EU Party acknowledges that membership of an accredited profession is not mandatory in Ecuador.

(40) The reference to ‘other than a non-profit organization’ only applies to Austria, Belgium, Cyprus, Czech Republic, Germany, Denmark, Estonia, Greece, Spain, Finland, France, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, The Netherlands, Portugal, Slovenia, United Kingdom and Peru.

Article 124. Key Personnel and Graduate Trainees

1. For every sector committed in accordance with Chapter 2 (Establishment) of this Title and subject to any reservations listed in Annex VII (List of Commitments on Establishment) or in Appendix 1 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes), each Party shall allow investors of another Party to employ in their establishment natural persons of that other Party, provided that such employees are key personnel or graduate trainees as defined in Article 123. The entry and temporary stay of key personnel and graduate trainees shall be for a period of up to three years (41) for intra-corporate transferees, 90 days in any 12 month period for business visitors, and one year for graduate trainees.

2. For every sector committed in accordance with Chapter 2 (Establishment) of this Title, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Appendix 1 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes), are defined as discriminatory limitations and as limitations on the total number of natural persons that an investor may employ as key personnel and graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test.

(41) For Colombia and Ecuador, the maximum length of stay for intra-corporate transferees is two years, renewable for an additional year. For Peru, the work contract may be up to three years. However, the length of stay for intra-corporate transferees is up to one year, renewable provided that the conditions which motivated its granting are maintained.

Article 125. Business Services Sellers

For every sector committed in accordance with Chapters 2 (Establishment) or 3 (Cross-Border Supply of Services) and subject to any reservations listed under Annexes VII (List of Commitments on Establishment) and VIII (List of Commitments on Cross-Border Supply of Services), each Party shall allow the entry and temporary stay of business services sellers for a period of up to 90 days in any 12 month period.

Article 126. Contractual Services Suppliers

1. The Parties reaffirm their respective rights and obligations arising from their commitments under the GATS as regards the entry and temporary stay of contractual services suppliers.

2. Colombia and the EU Party shall allow the supply of services into their territory through presence of natural persons, by contractual services suppliers of the EU Party and Colombia respectively subject to the conditions specified in paragraph 4 and in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes) for each of the following sectors:

(a) legal advisory services in respect of public international law and foreign law; in the case of the EU Party, European Union law (hereinafter referred to "EU law") shall not be considered as public international law or foreign law;

(b) accounting, and book-keeping services;

(c) taxation advisory services;

(d) architectural services;

(e) urban planning and landscape architectural services;

(f) engineering services;

(g) integrated engineering services;

(h) medical (including psychologists) and dental services;

(i) veterinary services;

(j) midwives services;

(k) services provided by nurses, physiotherapists and paramedical personnel;

(l) computer and related services;

(m) market research and opinion polling;

(n) management consulting services;

(o) services related to management consulting;

(p) design services;

(q) chemical engineering, pharmaceutics, and photochemistry; (r) services in cosmetics technology;

(s) specialised services in technology, engineering, marketing and sales for the automotive sector;

(t) commercial design services and marketing for the fashion textile industry, garments, footwear and articles; and

(u) maintenance and repair of equipment, including transportation equipment notably in the context of an after-sales or after-lease services contract.

3. Peru and the EU Party shall allow the supply of services into their territory through presence of natural persons, by contractual services suppliers of the EU Party and Peru respectively subject to the conditions specified in the paragraph 4 and in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes) for each of the following sectors:

(a) legal advisory services in respect of public international law and foreign law (in the case of the EU Party, EU law shall not be considered as public international law or foreign law);

(b) accounting, and book-keeping services;

(c) taxation advisory services;

(d) architectural services;

(e) urban planning and landscape architectural services;

(f) engineering services;

(g) integrated engineering services;

(h) medical (including psychologists) and dental services;

(i) veterinary services;

(j) midwives services;

(k) computer and related services;

(l) market research and opinion polling;

(m) management consulting services; and

(n) services related to management consulting.

3a. Ecuador and the EU Party shall allow the supply of services into their territory through presence of natural persons, by contractual services suppliers of the EU Party and Ecuador respectively subject to the conditions specified in paragraph 4 and in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes) for each of the following sectors:

(a) legal advisory services in respect of public international law and foreign law; in the case of the EU Party, EU law shall not be considered as public international law or foreign law;

(b) accounting, and book-keeping services;

(c) architectural services;

(d) urban planning and landscape architectural services;

(e) engineering services;

(f) integrated engineering services;

(g) medical (including psychologists) and dental services;

(h) veterinary services;

(i) computer and related services;

(j) market research and opinion polling;

(k) management consulting services;

(l) services related to management consulting;

(m) design services;

(n) chemical engineering, pharmaceutics, and photochemistry;

(o) services in cosmetics technology;

(p) specialised services in technology, engineering, marketing and sales for the automotive sector;

(q) commercial design services and marketing for the fashion textile industry, garments, footwear and articles; and

(r) maintenance and repair of equipment, including transportation equipment notably in the context of an after-sales or after-lease services contract.

4. The commitments undertaken by the Parties are subject to the following conditions:

(a) natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person which has obtained a service contract not exceeding 12 months;

(b) natural persons entering the territory of another Party should be offering such services as employees of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the territory of such other Party; in addition, a natural person must possess, at the date of submission of an application for entry into the territory of a Party, at least three years of professional experience (42) in the sector of activity which is the subject of the contract;

(c) natural persons entering the territory of another Party must:

(i) hold a university degree or a qualification demonstrating knowledge of an equivalent level (43); and

(ii) have professional qualifications where required for the exercise of an activity pursuant to the laws, regulations or requirements of the Party where the service is supplied.

(d) natural persons shall not receive remuneration for the supply of services other than the remuneration paid by the juridical person where they are employed during their stay in the territory of another Party;

(e) entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of no longer than six months or, in the case of Luxembourg, 25 weeks in any 12-month period or for the duration of the contract, whichever is shorter;

(f) access accorded under this Article relates only to the service activity which is the subject of the contract, and does not confer entitlement to exercise the professional title of the Party where the service is provided;

(g) the number of persons covered by the services contract shall not be higher than necessary to fulfil the contract, as it may be established by the law, regulations and requirements of the Party where the service is supplied;

(h) other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business

Purposes).

(42) For purposes of this subparagraph, ‘professional experience’ means that obtained after having reached the age of majority.

(43) Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether such degree or qualification is equivalent to a university degree required in its territory

Article 127. Independent Professionals

1. The Parties reaffirm their respective rights and obligations arising from their commitments under the GATS as regards the entry and temporary stay of independent professionals.

2. Colombia and the EU Party shall allow the supply of services into their territory by independent professionals of the EU Party and Colombia respectively through presence of natural persons, subject to the conditions specified in the paragraph 4 and in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes) for each of the following sectors:

(a) legal advisory services in respect of public international law and foreign law (in the case of the EU Party, "EU law" shall not be considered as public international law or foreign law);

(b) architectural services;

(c) engineering services;

(d) integrated engineering services;

(e) computer and related services;

(f) market research and opinion polling;

(g) management consulting services;

(h) services related to management consulting;

(i) translation and interpretation services; and

(j) specialised services in technology, engineering, marketing and sales for the automotive sector.

3. Peru and the EU Party shall allow the supply of services into their territory by independent professionals of the EU Party and Peru respectively through presence of natural persons, subject to the conditions specified in the paragraph 4 and in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes) for each of the following sector:

(a) legal advisory services in respect of public international law and foreign law (in the case of the EU Party, "EU law" shall not be considered as public international law or foreign law);

(b) architectural services;

(c) engineering services;

(d) integrated engineering services;

(e) computer and related services;

(f) market research and opinion polling;

(g) management consulting service; and

(h) services related to management consulting.

3a. Ecuador and the EU Party shall allow the supply of services into their territory by independent professionals of the EU Party and Ecuador respectively through presence of natural persons, subject to the conditions specified in paragraph 4 and in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes) for each of the following sectors:

(a) legal advisory services in respect of public international law and foreign law (in the case of the EU Party, EU law shall not be considered as public international law or foreign law);

(b) architectural services;

(c) engineering services;

(d) integrated engineering services;

(e) computer and related services;

(f) market research and opinion polling;

(g) management consulting services;

(h) services related to management consulting; and

(i) specialised services in technology, engineering, marketing and sales for the automotive sector.

4. The commitments undertaken by the Parties are subject to the following conditions:

(a) natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in another Party and must have obtained a service contract for a period not exceeding 12 months;

(b) natural persons entering the territory of another Party must possess, at the date of submission of an application for entry into such other Party, at least six years' professional experience in the sector of activity which is the subject of the contract;

(c) the natural persons entering the territory of another Party must:

(i) hold a university degree or a qualification demonstrating knowledge of an equivalent level (44); and

(ii) have professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements of the Party where the service is supplied;

(d) the entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, 25 weeks in any 12-month period or for the duration of the contract, whichever is shorter;

(e) access accorded under this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided; and

(f) other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes).

(44) Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether such degree or qualification is equivalent to a university degree required in its territory.

Article 128. Short Term Visitors for Business Purposes

1. The Parties shall endeavour to facilitate, in conformity with their respective legislation, the entry and temporary stay in their territories of short term visitors for business purposes with a view to carrying out the following activities (45):

(a) research and design: technical, scientific and statistical researchers on behalf of a company located in the territory of another Party;

(b) marketing research: personnel conducting research or analysis, including market research, on behalf of a company established in the territory of another Party;

(c) trade fairs and exhibitions: personnel attending a trade fair for the purpose of promoting their company or its products or services; and

(d) tourism personnel (hotel representatives, tour and travel agents, tour guides or tour operators) attending or participating in tourism conventions or tourism exhibitions or fairs, or conducting a tour that has begun in the territory of another Party;

provided that such short term visitors:

(a) are not engaged in selling their goods or services to the general public or in supplying goods or services themselves;

(b) do not on their own behalf receive any remuneration from a source located within the European Union or a signatory Andean Country where they are staying temporarily; and (c) are not engaged in the supply of a service in the framework of a contract concluded between a juridical person with no commercial presence in the European Union or in a signatory Andean Country, where the short-term visitor for business purposes is staying temporarily, and a consumer in the European Union or a signatory Andean Country.

2. The entry and temporary stay in the territory of a Party by short term visitors of another Party when allowed shall be for a period of up to 90 days in any 12 month period.

(45) The activities listed under subparagraphs (c) and (d) only apply between Colombia and the EU Party, and Ecuador and the EU Party, respectively.

Chapter 5. Regulatory Framework

Section 1. Provisions of General Application

Article 129. Mutual Recognition

1. Nothing in this Title shall prevent a Party from requiring natural persons to have the necessary qualifications and/or professional experience required in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties shall encourage the relevant professional bodies in their respective territories to jointly develop and provide the Trade Committee with recommendations on mutual recognition for the purpose of the fulfilment, in whole or in part, by investors and service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of investors and service suppliers and, in particular, of professional services.

3. Upon receipt of a recommendation as referred to in paragraph 2, the Trade Committee shall review, within reasonable time, such recommendation with a view to determining whether it is consistent with this Agreement.

4. When a recommendation has been found by the Trade Committee to be consistent with this Agreement pursuant to paragraph 3, and there is a sufficient level of correspondence between the relevant regulations of the Parties, the Parties shall, with a view to implementing that recommendation, negotiate through their competent authorities an agreement on mutual recognition of requirements, qualifications, licences and other regulations.

5. Any agreement reached under paragraph 4 shall be consistent with the relevant provisions of the WTO Agreement, in particular Article VII of the GATS.

Article 130. Transparency and Disclosure of Confidential Information

1. Each Party shall:

(a) respond promptly to all requests by another Party for specific information regarding any of its measures of general application or international agreements which relate to or affect this Title; and

(b) establish one or more enquiry points to provide specific information to investors and services suppliers of another Party, upon request, on all matters referred to in subparagraph (a). Such enquiry points are listed in Annex X (Enquiry Points Regarding Trade in Services, Establishment and Electronic Commerce). Enquiry points need not be depositories of laws and regulations.

2. Nothing in this Title shall require a Party to provide confidential information the disclosure of which would impede law enforcement or otherwise be contrary to public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 131. Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application covered by this Title are administered in a reasonable, objective and impartial manner.

2. Where authorisation is required for the supply of a service or establishment for which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

3. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross border supply of services or temporary presence of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Parties shall ensure that the procedure in fact provides for an objective and impartial review.

4. Following the necessary consultations between the Parties, this Article shall be amended, as appropriate, so as to incorporate into this Title the results of any negotiation pursuant to Article VI.4 of the GATS or any similar negotiation undertaken in other multilateral fora in which the Parties participate once the resulting commitments enter into force.

5. Pending the completion of negotiations pursuant to Article VI:4 of the GATS as referred to in paragraph 4, no Party shall apply licensing and qualification requirements, procedures and technical standards, that nullify or impair their specific commitments in a manner which:

(a) does not comply with the criteria outlined in Article VI:4 (a), (b), (c) of the GATS; and

(b) could not reasonably have been expected of that Party at the time the specific commitments were made.

6. In determining whether a Party is in conformity with its obligations under paragraph 5, account shall be taken of international standards of relevant international organisations (46) applied by that Party.

(46) The term 'relevant international organisations' refers to international bodies whose membership is open to the relevant bodies of the Parties.

Section 2. Computer Services

Article 132. Understanding on Computer Services

To the extent that trade in computer services is liberalised in accordance with Chapters 2 (Establishment), 3 (Cross-Border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes), the Parties subscribe to the understanding set out in the following subparagraphs:

(a) the CPC 84 code, used for describing computer and related services, covers the basic functions used to provide all computer and related services: computer programmes defined as the sets of instructions required to make computers work and communicate (including their development and implementation), data processing and storage, and related services, such as consultancy and training services for staff of clients. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of these basic functions. For example, services such as web or domain hosting, data mining services and grid computing each consist of a combination of basic computer services functions;

(b) computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:

(i) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems;

(ii) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programmes;

(iii) data processing, data storage, data hosting or database services;

(iv) maintenance and repair services for office machinery and equipment, including computers; or

(v) training services for staff of clients related to computer programmes, computers or computer systems, and not classified

elsewhere;

(c) computer and related services enable the provision of other services (e.g. banking) by both electronic and other means. However, there is an important distinction between the enabling service (e.g. web-hosting or application hosting) and the content or core service that is being delivered electronically (e.g. banking). In such cases, the content or core service is not covered by the CPC 84 code.

Section 3. Postal and Courier Services

Article 133. Scope of Application

This Section sets out the principles of the regulatory framework for all postal and courier services committed in accordance with Chapters 2 (Establishment), 3 (Cross-Border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes).

Article 134. Definitions

For the purpose of this Section and of Chapters 2 (Establishment), 3 (Cross-Border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes):

- "individual license" means an authorisation, concession, or any other kind of permit granted to an individual supplier by a regulatory authority, which is required before supplying a given service; and

- "universal service" means the permanent supply of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.

Article 135. Prevention of Anti-competitive Practices In the Postal and Courier Services Sector

In accordance with the provisions of Title VIII (Competition), each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, have the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for postal and courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.

Article 136. Universal Service

Each Party has the right to define the kind of universal service obligation it wishes to adopt or maintain. Such obligation shall not be regarded as anti-competitive per se, provided it is administered in a transparent, non-discriminatory and competitively neutral manner and it is not more burdensome than necessary for the kind of universal service defined by the Party.

Article 137. Individual Licences

1. A Party shall only require an individual licence for services within the scope of the universal service (47).

2. Where a Party requires an individual licence, the following information shall be made publicly available:

(a) all licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of individual licences.

3. Where a Party denies granting an individual licence, that Party shall, upon request, inform the applicant of the reasons for the denial. Each Party shall establish or maintain an appeal or review procedure, as appropriate, before an independent body (48). Such procedures shall be transparent, non-discriminatory, and based on objective criteria.

(47) In Colombia, the official postal operator or concessionary is a juridical person which supplies the universal postal service under a concession contract. The remaining postal services are subject to an expedited licensing regime administered by the Ministry of Information and Communications Technology. In Peru, the designated postal operator is a juridical person which under a concession granted by law, and with no exclusivity, has the obligation to supply the postal service in the whole country. The other postal services are subject to a permit regime

granted by the Ministry of Transportation and Communications. In Ecuador, the official postal operator supplies universal postal services in the whole country under a licence granted by law, and with no exclusivity. The remaining postal services are subject to a permit registration regime administered by the National Postal Agency

(48) For greater certainty, the independent body may be of a judicial nature.

Article 138. Independence of Regulatory Bodies

Regulatory bodies shall be legally separate from, and not accountable to, any supplier of postal and courier services. The decisions of regulatory bodies, as well as the procedures applied by them, shall be impartial with respect to all market participants.

Section 4. Telecommunications Services

Article 139. Scope of Application

This Section sets out the principles of the regulatory framework for telecommunications services, other than broadcasting (49), committed pursuant to Chapters 2 (Establishment), 3 (Cross-Border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes) (50) (51) (52).

(49) 'Broadcasting' is defined as the uninterrupted chain of transmission required for the distribution of TV and radio programme signals to the general public, but does not cover contribution links between operators.

(50) Between the EU Party and Peru, this Section shall only apply to telecommunication services offered to the general public that involve the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

(51) Between the EU Party and Colombia, this Section shall also apply to value added telecommunications services. For greater certainty and for the purposes of this Section and Annex VII (List of Commitments on Establishment) and Annex VIII (List of Commitments on Cross-Border Supply of Services), for Colombia and the EU Party, 'value added telecommunications services' are telecommunications services for which suppliers 'add value' to the customer's information by enhancing its form or content or by providing for its storage and retrieval.

(52) Between the EU Party and Ecuador, this Section shall also apply to value added telecommunications services. For greater certainty and for the purposes of this Section and Annex VII (List of Commitments on Establishment) and Annex VIII (List of Commitments on Cross-Border Supply of Services), for Ecuador and the EU Party, 'value added telecommunications services' are telecommunications services for which suppliers 'add value' to the customer's information by enhancing its form or content or by providing for its storage and retrieval.

Article 140. Definitions

For the purposes of this Section:

- "essential telecommunications facilities" means facilities of a public telecommunications transport network and service (53) that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to provide a service;

- "interconnection" means linking with suppliers providing public telecommunications transport networks or services (54) in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

- "major supplier" means a supplier in the telecommunications sector which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for telecommunications services as a result of

control over essential facilities or the use of its position in the market;

- "regulatory authority" means the body or bodies in the telecommunications sector in charge of the regulation of telecommunications referred to in this Section; and

- "telecommunications services" means all services consisting of the transmission and reception of electro-magnetic signals and does not cover the economic activity consisting of the provision of content which requires telecommunications for its transport.

(53) For greater certainty, 'public telecommunication transport service' shall be understood as defined in the Annex on Telecommunications of the GATS.

(54) For greater certainty, 'public telecommunication transport service' shall be understood as defined in the Annex on Telecommunication of the GATS.

Article 141. Competitive Safeguards on Major Suppliers

In accordance with the provisions of Title VIII (Competition), each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers which, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include, in particular:

(a) engaging in anti-competitive cross-subsidisation, or in margin squeeze (55);

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other services suppliers on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

(55) The reference to 'margin squeeze' only applies to the EU Party.

Article 142. Additional Obligations of Major Suppliers (56)

1. In accordance with the respective domestic legislation and procedures established by each Party, the regulatory authority of each Party shall, where appropriate, impose on major suppliers:

(a) obligations on transparency in relation to interconnection and/or access. Where a major supplier has obligations of non-discrimination as provided for in subparagraph (b), the regulatory authority may require that the major supplier publish a reference offer which is sufficiently unbundled to ensure that suppliers are not required to pay for facilities which are not necessary for the service requested. Such reference offer shall also include a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions, including prices;

(b) obligations of non-discrimination in relation to interconnection and/or access:

(i) to ensure that major suppliers in its territory apply equivalent conditions in equivalent circumstances to telecommunications services suppliers of another Party providing equivalent services; and

(ii) for services and information to other suppliers under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries or partners;

(c) obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning the cost accounting systems for the provision of specific types of interconnection and/or access; and (d) obligations to meet reasonable requests by the suppliers of another Party for access to and use of specific network elements and associated facilities, inter alia, in situations where the regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.

2. Pursuant to subparagraph 1(d), major suppliers may be required to, inter alia:

(a) grant third parties access to specified network elements and/or facilities;

(b) negotiate in good faith with undertakings requesting access;

(c) provide specified services on a wholesale basis for resale by third parties;

(d) grant access to technical interfaces, protocols or other key technologies, which are indispensable for the interoperability of networks, and that allow, upon request, interconnection at additional points other than the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities;

(e) provide co-location or other forms of facility sharing, including duct, building or mast sharing;

(f) provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks; and

(g) interconnect networks or network facilities.

(56) This Article is not part of the commitments assumed between Peru and the EU Party under this Agreement without prejudice to the domestic legislation of each Party. For Colombia and the EU Party, and Ecuador and the EU Party, respectively, this Article shall only apply to telecommunication services that involve the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

Article 143. Regulatory Authorities

1. Regulatory authorities for telecommunications services shall be legally distinct and functionally independent from any supplier of telecommunications services.

2. The regulatory authority shall be sufficiently empowered to regulate the sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

3. The decisions of, and the procedures applied by, regulatory authorities shall be transparent and impartial with respect to all market participants.

4. A supplier affected by a decision of a regulatory authority of Colombia shall have the right to an appeal or review procedure, as appropriate, before a body independent of that regulatory authority.

5. A supplier affected by a decision of a regulatory authority of Peru or of the EU Party shall have the right to appeal such decision before an appeal body independent of the parties involved and which can be either judicial or non-judicial in character.

6. Where an appeal body of a Party is not judicial in character, written reasons for its decision shall always be provided and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions adopted by review or appeal bodies of a Party, as appropriate, shall be effectively enforced.

Article 144. Authorisation to Provide Telecommunications Services

1. The Parties shall endeavour to apply simplified procedures in authorising the provision of telecommunications services.

2. In accordance with the domestic legislation of each Party, an authorisation (57) may be required to address issues of attributions of numbers and frequencies. The terms and conditions for such authorisation shall be made publicly available.

3. Where an authorisation is required:

(a) all authorisation criteria and a reasonable period of time normally required to reach a decision concerning that application for an authorisation shall be made publicly available;

(b) the reasons for the denial of an authorisation shall be communicated in writing to the applicant upon request;

(c) in case that an authorisation is unduly denied, the applicant shall be able to seek review of and/or appeal against the decision in accordance with the domestic legislation of the respective Party;

(d) fees required by any Party for granting an authorisation shall not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable authorisation (58).

(57) For the purposes of this Section, the term 'authorisation' shall be understood to include licenses, concessions, permits, registries or any other authorisation that a Party may require to supply telecommunications services.

(58) Authorisation fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision. For greater certainty, this subparagraph shall not be construed to restrict the right of each Party to require payment for the allocation of scarce resources such as the radio spectrum.

Article 145. Interconnection

1. Each Party shall ensure that any supplier authorised to provide telecommunications services in its territory has the right to negotiate interconnection with other providers of publicly available telecommunications networks and services. Interconnection should, in principle, be agreed on the basis of a commercial negotiation between the suppliers concerned.

2. Regulatory authorities of each Party shall require that suppliers that acquire information from another supplier during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

3. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and with a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, which have regard to economic feasibility, and which are sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

5. Each Party shall require that major suppliers make publicly available either their interconnection agreements or their reference interconnection offers.

6. Each Party shall ensure that a service supplier requesting interconnection with a major supplier has recourse, either at any time or after a reasonable period of time which has been made publicly known, to an independent domestic body, which may be a regulatory authority as referred to in Article 143, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time.

Article 146. Scarce Resources

Each Party shall ensure that any procedure for the allocation and use of scarce resources, including frequencies, numbers and rights-of-way, are carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses shall not be required.

Article 147. Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to adopt or maintain.

2. The obligations referred to in paragraph 1 shall not be regarded as anti-competitive per se, provided that such obligations are administered in a transparent, objective and non-discriminatory manner. The administration of such obligations shall also be neutral with respect to competition and shall not be more burdensome than necessary for the kind of universal service defined by each Party.

3. All suppliers should be eligible to ensure universal service and no supplier shall be a priori excluded. The designation shall be made through an efficient, transparent and non-discriminatory mechanism, in accordance with the domestic legislation

of each Party.

Article 148. Telephone Directories

Each Party shall ensure that:

(a) directories of all fixed telephone subscribers are available to users in a form approved by the national regulatory authority, whether printed or electronic, or both, and are updated on a regular basis, and at least once a year; and

(b) organisations that provide the services referred to in subparagraph (a) apply the principle of non-discrimination to the treatment of information that has been provided to them by other organisations.

Article 149. Confidentiality of Information

Each Party shall ensure the confidentiality of telecommunications and related traffic data by means of a publicly available telecommunications networks and services without restricting trade in services.

Article 150. Disputes between Suppliers

1. In the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations set out in this Section, the regulatory authority of the Party concerned shall, at the request of a party to the dispute, issue a binding decision to resolve the dispute within the shortest possible timeframe.

2. When such a dispute relates to cross-border supply of services, the regulatory authorities of the Parties concerned shall coordinate their efforts in order to achieve a resolution of the dispute.

Section 5. Financial Services

Article 151. Scope of Application

This Section establishes the principles of the regulatory framework for all financial services committed pursuant to Chapters 2 (Establishment), 3 (Cross-Border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes) of this Title. This Section applies to measures affecting the supply of financial services (59).

(59) Reference to the supply of a financial service in this Section shall mean the supply of a service as defined in Article 108.

Article 152. Definitions

For the purposes of this Chapter and of Chapters 2 (Establishment), 3 (Cross-Border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes) of this Title:

- "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

(a) insurance and insurance-related services:

(i) direct insurance (including co-insurance):

(A) life;

(B) non-life;

(ii) reinsurance and retrocession;

(iii) insurance inter-mediation, such as brokerage and agency; and

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

(b) banking and other financial services (excluding insurance):

(i) acceptance of deposits and other repayable funds from the public;

(ii) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(iii) financial leasing;

(iv) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(v) guarantees and commitments;

(vi) trading, for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);

(B) foreign exchange;

(C) derivative products including, but not limited to, futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(E) transferable securities; and

(F) other negotiable instruments and financial assets, including bullion;

(vii) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(viii) money broking;

(ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(x) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xi) provision and transfer of financial information, and financial data processing and related software; and

(xii) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (i) through (xi) above, including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy;

- "financial service supplier" means any natural or juridical person of a Party that seeks to supply or supplies financial services. The term "financial service supplier" does not include a public entity;

- "new financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of another Party;

- "public entity" means:

(a) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;

- "self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing agency or other organisation or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers; for greater certainty, a self-regulatory organisation shall not be considered a designated monopoly for purposes of Title VIII (Competition);

- "services supplied in the exercise of governmental authority" for the purposes of Article 108, also includes:

(a) activities conducted by a central bank or a monetary authority or by any other public entity in pursuit of monetary or

exchange rate policies;

(b) activities forming part of a statutory system of social security or public retirement plans; and

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government;

for purposes of the definition of "services supplied in the exercise of governmental authority" in Article 108, if a Party allows any of the activities referred to in subparagraphs (b) or (c) above to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, the definition of "services" as established in Article 108 shall include such activities.

Article 153. Clearing and Payment Systems

1. Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of another Party established in its territory access to payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to lender of last resort facilities of a Party.

2. Where a Party:

(a) requires, as a condition for financial service suppliers of another Party to supply financial services on an equal basis with domestic financial service suppliers, membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organisation or association; or

(b) provides, directly or indirectly, such entities privileges or advantages in supplying financial services; such Party shall ensure that such entities accord national treatment to financial service suppliers of another Party resident in its territory.

Article 154. Prudential Carve-out

1. Notwithstanding other provisions of this Title or Title V (Current Payments and Movements of Capital), a Party may adopt or maintain for prudential reasons (60), measures such as:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;

(b) ensuring the integrity and stability of its financial system.

2. Measures referred to in paragraph 1 shall not be more burdensome than necessary to achieve their aim, and shall not discriminate against financial services or financial service suppliers of another Party in comparison to its own like financial services or like financial service suppliers.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

4. Without prejudice to other means of prudential regulation of the cross-border supply of financial services, a Party may require the registration or authorisation of cross-border suppliers of financial services of another Party and of financial instruments.

(60) The term ‘prudential reasons’ may include the maintenance of the safety, soundness, integrity or financial responsibility of individual financial service suppliers.

Article 155. Effective and Transparent Regulation

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that that Party intends to adopt in order to give an opportunity for such persons to comment on the measure. Such measure shall be provided:

(a) by means of an official publication; or

(b) in other written or electronic form.

2. Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

3. Upon request of an applicant, the Party concerned shall inform the applicant of the status of his/her application. Where the Party concerned requires additional information from the applicant, it shall notify the applicant without undue delay.

4. Each Party shall make its best endeavours to ensure that international standards for regulation and supervision in the financial services sector and for the fight against money laundering and the financing of terrorism are implemented and applied in its territory. Such international standards are the Core Principle for Effective Banking Supervision of the Basel Committee, the Insurance Core Principles and Methodology of the International Association of Insurance Supervisors, the Objectives and Principles of Securities Regulation of the International Organisation of Securities Commissions, the Forty Recommendations on Money Laundering, and the Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force.

5. The Parties also take note of the "Ten Key Principles for Information Sharing" promulgated by the Finance Ministers of the G7 Nations and the Agreement on Exchange of Information on Tax Matters of the Organisation on Economic Cooperation and Development's (hereinafter referred to as "OECD") and the Statement on Transparency and exchange of information for tax purposes of the G20.

Article 156. New Financial Services

Each Party shall permit a financial service supplier of another Party established in its territory to supply any new financial service of a type similar to those services which that Party permits its own financial service suppliers to supply under its domestic law in like circumstances. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of such service. Where such authorisation is required, a decision shall be made within a reasonable period of time and the authorisation may only be refused for prudential reasons.

Article 157. Data Processing

1. Each Party shall permit a financial service supplier of another Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.

2. Each Party shall adopt adequate safeguards for the protection of the right to privacy and the freedom from interference with the privacy, family, home or correspondence of individuals, in particular with regard to the transfer of personal data.

Article 158. Recognition of Prudential Measures

1. A Party may recognise prudential measures of any other country in determining how the measures relating to financial services of that Party shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned, or may be granted autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for another Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with such Party, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation and, if appropriate, procedures concerning the sharing of information between the Parties to the agreement or arrangement. Where a Party accords recognition autonomously, such Party shall afford adequate opportunity for another Party to demonstrate that those circumstances exist.

Article 159. Specific Exceptions

1. Nothing in this Title shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing, in its territory, activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the domestic regulation of that Party, by financial service suppliers in competition with public entities or private institutions.

2. Nothing in this Agreement applies to activities or measures conducted or adopted by a central bank or monetary, exchange rate or credit authority or by any other public entity in pursuit of monetary and related credit or exchange rate policies.

3. Nothing in this Title shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

Section 6. International Maritime Transport Services

Article 160. Scope of Application and Principles

1. This Section sets out the principles for international maritime transport services committed pursuant to Chapters 2 (Establishment), 3 (Cross-border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes) of this Title.

2. In view of the existing levels of liberalisation between the Parties in international maritime transport, each Party shall:

(a) effectively apply the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis; and

(b) grant ships flying the flag of another Party or operated by service suppliers of another Party treatment no less favourable than that accorded to its own ships with regard to, inter alia, access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

3. In applying these principles, each Party shall:

(a) not introduce cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous bilateral agreements; and

(b) upon entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which may constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

4. Each Party shall permit international maritime service suppliers, including maritime agency services of another Party, to have an establishment in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third country, whichever are more favourable.

5. Each Party shall make available to international maritime transport suppliers of another Party, on reasonable and non-discriminatory terms and conditions, the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

Article 161. Definitions

For the purposes of this Section and Chapters 2 (Establishment), 3 (Cross-border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes) of this Title:

- "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;

- "customs clearance services" (alternatively "customs house brokers services") means activities consisting in carrying out, on behalf of another party, customs formalities concerning import, export or through transport of cargoes, whether such services are the main activity of the service provider or a usual complement of its main activity;

- "freight forwarding services" means the activity consisting in organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

- "international maritime transport" includes door-to-door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect includes the right to directly contract with providers of other modes of transport;

- "maritime agency services" means activities consisting in representing as an agent, within a given geographic area, the

business interests of one or more shipping lines or shipping companies, for the following purposes:

(a) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; and

(b) organising, on behalf of shipping companies, the call of ships or take over cargoes when required;

- "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:

(a) the loading/discharging of cargo to/from a ship;

(b) the lashing/unlashing of cargo; and

(c) the reception/delivery and safekeeping of cargoes before shipment or after discharge.

Chapter 6. Electronic Commerce

Article 162. Objective and Principles

1. The Parties, recognising that electronic commerce increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them, in particular by cooperating on issues arising from electronic commerce under the provisions of this Title.

2. The Parties agree that the development of electronic commerce shall be consistent with the international standards of data protection, in order to ensure the confidence of users of electronic commerce.

3. The Parties agree that a delivery by electronic means shall be considered as a provision of services, within the meaning of Chapter 3 (Cross-border Supply of Services), and shall not be subject to customs duties.

Article 163. Regulatory Aspects of Electronic Commerce

1. The Parties shall maintain a dialogue on regulatory issues arising from electronic commerce which shall inter alia address the following issues:

(a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;

(b) the liability of intermediary service providers with respect to the transmission, or storage of information;

(c) the treatment of unsolicited electronic commercial communications;

(d) the protection of consumers in the field of electronic commerce from, among others, fraudulent and misleading commercial practices in the cross border context;

(e) the protection of personal data;

(f) the promotion of paperless trading; and

(g) any other issue relevant for the development of electronic commerce.

2. The Parties shall conduct such cooperation, inter alia, by exchanging information regarding their respective relevant legislation and jurisprudence, as well as on the implementation of such legislation.

Article 164. Protection of Personal Data

The Parties shall endeavour, insofar as possible, and within their respective competences, to develop or maintain, as the case may be, regulations for the protection of personal data.

Article 165. Management of Paperless Trading

The Parties shall endeavour, insofar as possible, and within their respective competences, to:

(a) make trade management documents available to the public in electronic form; and

(b) accept trade administration documents (61) submitted electronically as the legal equivalent of their paper version.

(61) For greater certainty, for Colombia and Peru, 'trade administration documents' means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the imports or exports of goods.

Article 166. Consumer Protection

1. The Parties recognise the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and misleading commercial practices when consumers engage in electronic commerce transactions.

2. The Parties recognise the importance of reinforcing consumer protection and of cooperation among domestic consumer protection authorities, in activities relating to electronic commerce.

Chapter 7. Exceptions

Article 167. General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, or a disguised restriction on establishment or cross-border supply of services, nothing in this Title and Title V (Current Payments and Capital Movements) shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public security or public morals or to maintain public order (62);

(b) necessary to protect human, animal or plant life or health, including those environmental measures necessary to this effect;

(c) relating to the conservation of living and non-living exhaustible natural resources, if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;

(d) necessary for the protection of national treasures of artistic, historic or archaeological value;

(e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title and Title V (Current Payments and Capital Movements) (63) including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety.

2. The provisions of this Title, Annexes VII (List of Commitments on Establishment) and VIII (List of Commitments on Cross-border Supply of Services) and Title V (Current Payments and Movement of Capital) shall not apply to the respective social security systems of the Parties or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

(62) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of the society.

(63) For greater certainty, in the case of Peru and Ecuador, the execution of measures that prevent a monetary transfer through the equitable, nondiscriminatory and good faith application of Peruvian and Ecuadorian Laws, respectively, relating to: (a) bankruptcy, insolvency, or the protection of the rights of creditors; (b) issuing, trading, or dealing in securities, futures, options, or derivatives; (c) criminal or penal offences; (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or (e) ensuring compliance with judicial or administrative orders or rulings in judicial or administrative proceedings, shall not be considered inconsistent with the provisions of this Title and

Title V. Current Payments and Capital Movements

Article 168. Current Account

The Parties shall authorise, in freely convertible currency and in accordance with the provisions of Article VIII of the Articles of Agreement of the International Monetary Fund, any payments and transfers on the current account of balance of payments between the Parties.

Article 169. Capital Account

With regard to transactions on the capital and financial account of balance of payments, following the entry into force of this Agreement, the Parties shall ensure the free movement of capital relating to direct investments (64) made in juridical persons constituted in accordance with the laws of the host country and investments and other transactions made in accordance with the provisions of Title IV (Trade in Services, Establishment, and Electronic Commerce) (65), as well as the liquidation and repatriation of these investments and of any profit stemming therefrom.

(64) For greater certainty, 'direct investment' does not mean credits related to foreign trade, portfolio investment according to domestic legislation, public debt and related credit.

(65) For greater certainty, Chapter 7 (Exceptions) in Title IV (Trade in Services, Establishment, and Electronic Commerce) shall also apply to this Title.

Article 170. Safeguard Measures

1. In the case of Colombia, where, in exceptional circumstances, payments and capital movements cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in Colombia, Colombia may adopt safeguard measures with regard to capital movements for a period not exceeding one year. These safeguard measures may be maintained beyond such period of time for justified reasons when it is necessary to overcome the exceptional circumstances that led to their application. In such event, Colombia shall present in advance to the other Parties the reasons that justify their maintenance.

2. In the case of Peru and the EU Party, where, in exceptional circumstances, payments and capital movements, cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in Peru or in the European Union, Peru or the EU Party may respectively adopt safeguard measures with regard to capital movements for a period not exceeding one year.

2a. In the case of Ecuador, where, in exceptional circumstances, payments and capital movements cause, or threaten to cause, serious difficulties to the liquidity of the Ecuadorian economy, Ecuador may adopt safeguard measures with regard to capital movements for a period not exceeding one year. These safeguard measures may be maintained beyond such period of time for justified reasons when it is necessary to overcome the exceptional circumstances that led to their application. In such event, Ecuador shall present in advance to the other Parties the reasons that justify their maintenance.

3. The application of safeguard measures pursuant to paragraph 2 may be extended through their formal reintroduction in case of extremely exceptional circumstances and after having coordinated in advance between the Parties concerned regarding the implementation of any proposed formal reintroduction.

4. Under no circumstance may the measures referred to in paragraphs 1, 2 and 2a be used as a means for commercial protection or for the purpose of protecting a particular industry.

5. A Party adopting or maintaining safeguard measures pursuant to paragraphs 1, 2, 2a or 3 shall promptly inform the other Parties of their relevance and scope, and present, as soon as possible, a schedule for their removal.

Article 171. Final Provisions

With the aim of supporting a stable and secure framework for long-term investment, the Parties shall consult with a view to facilitating the movement of capital between them, in particular the progressive liberalisation of capital and financial accounts.

Title VI. Government Procurement

Article 172. Definitions

For the purposes of this Title:

- "build-operate-transfer contract and public works concession contract" mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period, temporary ownership, or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

- "commercial goods or services" means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

- "construction service" means a service that has as its objective the realization by whatever means, of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (hereinafter referred to as "CPPC");

- "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

- "in writing" or "written" means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;

- "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

- "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity, relating to a covered procurement;

- "multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

- "notice of intended procurement" means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

- "offset" means any condition or undertaking that encourages local development or improves balance–of-payments accounts of a Party, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

- "open tendering" means a procurement method whereby all interested suppliers may submit a tender;

- "procuring entity" means an entity of a Party listed in Appendix 1 of Annex XII (Government Procurement);

- "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

- "selective tendering" means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

- "services" includes construction services, unless otherwise specified; and

- "technical specification" means a tendering requirement that:

(a) sets out the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

Article 173. Scope of Application

1. This Title applies to any measure adopted by a Party regarding covered procurement.

2. For the purposes of this Title, "covered procurement" means procurement for governmental purposes of goods, services, or any combination thereof as specified, with respect to each Party, in Appendix 1 of Annex XII (Government Procurement):

(a) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

(b) by any contractual means, including: purchase, hire purchase, lease or rental, with or without an option to buy, build-operate-transfer contracts and public works concession contracts;

(c) for which the value equals or exceeds the relevant threshold specified for each Party in Appendix 1 of Annex XII (Government Procurement), at the time of publication of a notice in accordance with Article 176;

(d) by a procuring entity; and

(e) that is not otherwise excluded from the scope of application of this Title.

3. Except where provided otherwise, this Title does not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, subsidies, equity infusions, guarantees, endorsements and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities (66);

(d) public employment contracts and related measures; and

(e) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

(ii) under the particular procedure or condition of an international agreement relating to:

(A) the stationing of troops; or

(B) the joint implementation of a project by the countries signatory to such agreement;

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance, where the applicable procedure or condition would be inconsistent with this Title.

4. Each Party shall specify the following information in its corresponding Subsection of Appendix 1 of Annex XII (Government Procurement):

(a) in Subsection 1, the central government entities whose procurement is covered by this Title;

(b) in Subsection 2, the sub-central government entities whose procurement is covered by this Title;

(c) in Subsection 3, all other entities whose procurement is covered by this Title;

(d) in Subsection 4, the goods covered by this Title;

(e) in Subsection 5, the services, other than construction services, covered by this Title;

(f) in Subsection 6, the construction services covered by this Title; and

(g) in Subsection 7, any General Notes.

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under Appendix 1 of Annex XII (Government Procurement) of a Party to procure in accordance with particular requirements, Article 175 shall apply mutatis mutandis to such requirements.

Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Title.

7. A procuring entity shall include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including premiums, fees, commissions,

and interest. Where the procurement provides for the possibility of option clauses, the procuring entity shall include the estimated maximum total value of the procurement, inclusive of optional purchases.

8. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring procurements"), the calculation of the estimated maximum total value shall be based on:

(a) the total maximum value of the procurement over its entire duration; or

(b) the value of recurring procurements of the same type of good or service awarded during the preceding 12 months or preceding fiscal year of the procuring entity, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(c) the estimated value of recurring procurements of the same type of good or service to be awarded during the 12 months following the initial contract award or the fiscal year of the procuring entity.

9. Nothing in this Title shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided that they are consistent with this Title.

(66) For greater certainty, this Title does not apply to procurement of banking, financial, or specialised services related to the following activities: (a) the incurring of public indebtedness; or (b) public debt management

Article 174. Exceptions

Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on international trade, nothing in this Title shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health, including the respective environmental measures;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

Article 175. General Principles

1. With respect to any measure related to covered procurement:

(a) the EU Party, including its procuring entities (67), shall accord immediately and unconditionally to the goods and services of the signatory Andean Countries and to the suppliers of the signatory Andean Countries offering such goods or services, treatment no less favourable than the treatment accorded to its own goods, services and suppliers;

(b) each signatory Andean Country, including its procurement entities, shall accord immediately and unconditionally to the goods and services of the EU Party and the suppliers of the EU Party offering such goods or services, treatment no less favourable than the treatment they accord to their own goods, services and suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of another Party.

Conduct of procurement

3. A procuring entity shall conduct covered procurement in a transparent and impartial manner that avoids conflicts of interest and prevents corrupt practices.

Tendering procedures

4. A procuring entity shall use methods such as open, selective and limited tendering procedures according to its national

legislation, in compliance with this Title.

Use of electronic means

5. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including the establishment of the time of receipt and the prevention of inappropriate access.

Rules of origin

6. For the purposes of covered procurement, no Party may apply rules of origin to goods or services imported from, or supplied by, another Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Offsets

7. Subject to the provisions contained in this Title or the Annex pertaining thereto, no Party shall seek, take account of, impose or enforce offsets.

Measures not specific to procurement

8. Paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

(67) 'procuring entities' of the EU Party includes 'procuring entities' of the Member States of the European Union as established in Appendix 1 of Annex XII (Government Procurement).

Article 176. Publication of Procurement Information

1. Each Party shall:

(a) promptly publish any measure of general application regarding covered procurement, and any modifications thereof, in officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public;

(b) provide an explanation thereof to another Party, on request;

(c) list in Appendix 2 of Annex XII (Government Procurement), the electronic or paper media in which the Party publishes the information described in subparagraph (a); and

(d) list in Appendix 3 of Annex XII (Government Procurement), the electronic media in which the Party publishes the notices required by this Article and Articles 177, 180, paragraph 1 and 188, paragraph 2.

2. Each Party shall promptly notify the other Parties of any modification to its information listed in Appendices 2 or 3 of Annex XII (Government Procurement).

Article 177. Publication of Notices

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 185, a procuring entity shall publish a notice of intended procurement in the appropriate media listed in Appendix 3 of Annex XII (Government Procurement). Each such notice shall include the information set out in Appendix 4 of Annex XII (Government Procurement). These notices shall be accessible by electronic means free of charge through a single point of access.

Notice of Planned Procurement

2. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year a notice regarding their future procurement plans. The notice should include the subject-matter of the procurement and the planned date of

publication of the notice of intended procurement.

3. A procuring entity listed in Subsection 3 of Appendix 1 of Annex XII (Government Procurement) may use a notice of planned procurement as a notice of intended procurement provided that it includes as much of the information in Appendix 4 of Annex XII (Government Procurement) as is available and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

Article 178. Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall evaluate the financial, commercial and technical abilities of a supplier on the basis of the business activities of that supplier both inside and outside the territory of the Party of the procuring entity, and may not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party or that the supplier has prior work experience in the territory of a given Party.

3. In making the assessment referred to in paragraph 2, a procuring entity shall base its evaluation on the conditions that it has specified in advance in notices or tender documentation.

4. A procuring entity may exclude a supplier on grounds such as bankruptcy, false declarations, significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts, judgments in respect of serious crimes or other judgments in respect of serious public offences, professional misconduct or failure to pay taxes.

5. A procuring entity may ask the tenderer to indicate in the tender any share of the contract the tenderer may intend to subcontract to third parties and any proposed subcontractors. This indication shall be without prejudice to the question of the liability of the principal contractor.

Article 179. Selective Tendering

1. Where a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in Appendix 4 of Annex XII (Government Procurement), paragraphs (a), (b), (d), (e), (h), and (i) and invite suppliers to submit a request for participation; and

(b) provide to the qualified suppliers, by the commencement of the time-period for tendering, at least the information in Appendix 4 of Annex XII (Government Procurement), paragraphs (c), (f), and (g).

2. A procuring entity shall recognise as a qualified supplier any domestic supplier and any supplier of another Party that meets the conditions for participation in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

3. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 1, a procuring entity shall ensure that those documents are made available at the same time to all qualified suppliers selected in accordance with paragraph 2.

Article 180. Multi-use List (68)

1. A procuring entity may establish or maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion in the list is published annually and, where published by electronic means, made available continuously in the appropriate medium listed in Appendix 3 of Annex XII (Government Procurement). Such a notice shall include the information set out in Appendix 5 of Annex XII (Government Procurement).

2. Notwithstanding paragraph 1, where a multi-use list is valid for three years or less, a procuring entity may publish a notice referred to in that paragraph only once, at the beginning of the period of validity of the list, provided that the notice states the period of validity and that further notices will not be published.

3. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all

qualified suppliers within a reasonably short time.

4. A procuring entity may use a notice inviting suppliers to apply for inclusion in a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 1 and includes the information required under Appendix 5 of Annex XII (Government Procurement) and as much of the information required by Appendix 4 of Annex XII (Government Procurement) as is available, and contains a statement that it constitutes a notice of intended procurement;

(b) the entity promptly provides to suppliers that have expressed an interest to the entity in a given procurement, sufficient information to permit them to assess their interest in the procurement, including all remaining information required under Appendix 4 of Annex XII (Government Procurement) to the extent that such information is available; and

(c) a supplier having applied for inclusion on a multi-use list in accordance with paragraph 3 may be allowed to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether it satisfies the conditions for participation.

5. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of its decision with respect to the request.

6. Where a procuring entity rejects a request by a supplier to participate in a procurement or an application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, upon request of the supplier, provide the supplier with a written explanation of the reasons for its decision.

(68) For Colombia, and for the purposes of paragraphs 3 and 4(c) of this Article, in the case of the 'concurso de méritos', the multi-use lists with a maximum duration of one year, have a specific time limit for its establishment determined by the procuring entity. Once this time limit is over, the inclusion of new suppliers will not be possible. Only suppliers included in the list may present tenders.

Article 181. Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specifications on international standards, where this exist; otherwise, on national technical regulations, recognised national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including such words as "or equivalent" in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement. 6. Each Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Article 182. Tender Documentation

1. A procuring entity shall provide to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such

documentation shall include a complete description of the requirements set out in Appendix 8 of Annex XII (Government Procurement).

2. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in the procurement, provided that such information does not give that supplier an advantage over its competitors in the procurement.

3. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time the information is amended, if known, and in all other cases, in the same manner as the original information; and

(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

Article 183. Time Periods

A procuring entity shall, in accordance with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation in a procurement and responsive tenders, taking into account such factors as the nature and complexity of the procurement, the extent of subcontracting anticipated, and the time for transmitting tenders from foreign as well as domestic points where electronic means are not used. The applicable time periods are set out in Appendix 6 of Annex XII (Government Procurement).

Article 184. Negotiations

1. A Party may provide for its procuring entities to conduct negotiations:

(a) in the context of procurements in which they have indicated such intent in the notice of intended procurement; or

(b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notices or tender documentation; and

(b) when applicable, where negotiations are concluded, provide a common deadline for the remaining suppliers to submit any new or revised tenders.

Article 185. Limited Tendering

A procuring entity may use limited tendering and may choose not to apply Articles 177 to 180, 182 to 184, 186 and 187 only under the following conditions:

(a) where:

(i) no tenders were submitted, or no suppliers requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive; provided that the requirements of the tender documentation are not substantially modified;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist because the procurement relates to a work of art; because of the protection of patents, copyrights or other exclusive rights; or because of the absence of competition for technical reasons, as in the case of the procurement of intuitu personae services;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement, where a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

(g) for purchases made under exceptionally advantageous conditions which only arise in the very short term in the case of unusual disposals, such as arising from liquidation, receivership or bankruptcy, and not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest, provided that the contest has been organised in a manner that is consistent with the principles of this Title, and the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

Article 186. Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

Article 187. Treatment of Tenders and Award of Contracts

1. A procuring entity shall receive, open and treat all tender according to procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders. They also shall treat tenders in confidence until at least the opening of the tenders.

2. To be considered for an award, a tender shall be in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

3. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted the most advantageous tender or, where price is the sole criterion, the lowest price.

4. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

Article 188. Transparency of Procurement Information

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions and, on request, shall do so in writing. Subject to Article 189 paragraphs 2 and 3, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the tender of the successful supplier.

2. Not later than 72 days after the award of each contract covered by this Title, a procuring entity shall publish a notice of the award that shall include at least the information set out in Appendix 7 of Annex XII (Government Procurement) in the appropriate paper or electronic medium listed in Appendix 2 of Annex XII (Government Procurement). Where only an

electronic medium is used, the information shall remain readily available for a reasonable period of time.

3. A procuring entity shall maintain reports and records of tendering procedures relating to covered procurements, including the reports provided for in Appendix 7 of Annex XII (Government Procurement), and shall retain such reports and records for a period of at least three years after the award of a contract.

Article 189. Disclosure of Information

1. A Party, upon request of another Party, shall provide promptly any information necessary to determine whether the procurement was conducted fairly, impartially and in accordance with this Title, including information on the characteristics and relative advantages of the successful tender. In cases where release of this information would prejudice competition in future tenders, the Party that receives that information shall not disclose it to any supplier, except after consultation with, and agreement of, the Party that provided the information.

2. Notwithstanding any other provision of this Title, a Party, including its procuring entities, shall not provide to any supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Title shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure would impede law enforcement, might prejudice fair competition between suppliers, would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property, or would otherwise be contrary to the public interest.

Article 190. Domestic Review Procedures

1. Each Party shall maintain or establish a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier which has or has had an interest in a covered procurement may challenge:

(a) a breach of this Title; or

(b) where the supplier does not have a right to challenge directly a breach of this Title under the domestic law of the Party, a failure to comply with the measures of a Party implementing this Title, arising in the context of such a covered procurement.

2. The procedural rules for all challenges pursuant to paragraph 1 shall be in writing and made generally available.

3. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as set out in paragraph 1, the Party concerned shall encourage its procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or his/her right to seek corrective measures under the administrative or judicial review procedure.

4. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

5. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

6. Where a body other than an authority referred to in paragraph 5 initially reviews a challenge, the corresponding Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge. A review body which is not a court, shall either be subject to judicial review or shall have procedures which provide that:

(a) the procuring entity responds in writing to the challenge and discloses all relevant documents to the review body;

(b) participants to the proceedings (hereinafter referred to as "participants") have the right to be heard prior to a decision of the review body being made on the challenge;

(c) participants have the right to be represented and accompanied;

(d) participants have access to all proceedings;

(e) participants have the right to request that the proceedings take place in public and that witnesses may be present; and

(f) decisions or recommendations relating to challenges by suppliers are provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) correction of a breach of this Title or compensation for the loss or damages suffered, where a review body has determined that there has been a breach or a failure as set out in paragraph 1. Such correction or compensation may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

Article 191. Modifications and Rectifications of Coverage

1. Where a Party modifies its coverage of procurement under this Title, such Party shall:

(a) notify the other Parties in writing; and

(b) include in the notification a proposal of appropriate compensatory adjustments to the other Parties to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding subparagraph 1(b), a Party does not need to provide compensatory adjustments where:

(a) the modification in question is a minor amendment or rectification of a purely formal nature; or

(b) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence.

3. If another Party does not agree that:

(a) the adjustment proposed under subparagraph 1(b) is adequate to maintain a comparable level of mutually agreed coverage;

(b) the proposed modification is a minor amendment or a rectification under subparagraph 2(a); or

(c) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 2(b); such other Party must object in writing within 30 days of the receipt of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification, including for the purposes of Title XII (Dispute Settlement).

4. Where the Parties within the Trade Committee agree on any proposed modification, rectification or minor amendment, including where a Party has not objected within 30 days under paragraph 3, the Parties shall modify forthwith the relevant Annex.

5. The EU Party may at any time engage in bilateral negotiations with any signatory Andean Country with a view to broadening the market access mutually granted under this Title.

Article 192. Micro, Small and Medium Enterprises Participation

1. The Parties recognise the importance of the participation of Micro and SMEs in government procurement.

2. The Parties also recognise the importance of business alliances between suppliers of the Parties, and in particular of Micro and SMEs, including the joint participation in tendering procedures.

3. The Parties agree to exchange information and work jointly with the aim of facilitating access by Micro and SMEs to government procurement procedures, methods and contracting requirements, focused on their special needs.

Article 193. Cooperation

1. The Parties recognise the importance of cooperation with a view to achieving a better understanding of their respective government procurement systems, as well as a better access to their respective markets, in particular for micro, small and medium suppliers.

2. The Parties shall endeavour to cooperate in matters such as:

(a) exchange of experiences and information, such as regulatory frameworks, best practices and statistics;

(b) development and use of electronic communications in government procurement systems;

(c) capacity building and technical assistance to suppliers with respect to access to the government procurement market;

(d) institutional strengthening for the implementation of the provisions of this Title, including training to government personnel; and

(e) capacity building to provide multilingual access to procurement opportunities.

3. The EU Party shall, upon request, provide assistance which it may deem appropriate to potential tenderers from the signatory Andean Countries in submitting their tenders and selecting the goods or services which are likely to be of interest to the procuring entities of the European Union or its Member States. Likewise, the EU Party shall assist them to comply with technical regulations and standards relating to goods or services which are the subject of the intended procurement.

Article 194. Sub-committee on Government Procurement

1. The Parties hereby establish a Sub-committee on Government Procurement comprising representatives of each Party.

2. The Sub-committee shall:

(a) evaluate the implementation of this Title, including the use of the opportunities offered by increased access to government procurement and recommend to the Parties the appropriate activities;

(b) evaluate and follow up the activities related to cooperation that the Parties submit; and

(c) without prejudice of Article 191, paragraph 5, consider further negotiations aimed at broadening the coverage of this Title.

3. The Sub-committee on Government Procurement shall meet at request of any Party in a place and date that will be agreed, and shall keep a written record of its meetings.

Title VII. Intellectual Property

Chapter 1. General Provisions

Article 195. Objectives

The objectives of this Title are to:

(a) promote innovation and creativity and facilitate the production and commercialisation of innovative and creative products between the Parties; and

(b) achieve an adequate and effective level of protection and enforcement of intellectual property rights that contributes to transfer and dissemination of technology and favour social and economic welfare and the balance between the rights of the holders and the public interest.

Article 196. Nature and Scope of the Obligations

1. The Parties reaffirm the rights and obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (hereinafter referred to as "TRIPS Agreement"), and any other multilateral agreement related to intellectual property and agreements administered under the auspices of the World Intellectual Property Organization (hereinafter referred to as "WIPO"), to which the Parties are party.

2. The provisions of this Title shall complement and specify the rights and obligations of the Parties under the TRIPS Agreement and other multilateral agreements related to intellectual property to which the Parties are party, and therefore, no provision of this Title will contradict or be detrimental to the provisions of such multilateral agreements.

3. The Parties recognise the need to maintain a balance between the rights of intellectual property holders and the interest of the public, particularly regarding education, culture, research, public health, food security, environment, access to information and technology transfer.

4. The Parties recognise and reaffirm the rights and obligations under the Convention on Biological Diversity (hereinafter referred to as "CBD") adopted on June 5, 1992, and support and encourage efforts to establish a mutually supportive relationship between the TRIPS Agreement and such Convention.

5. For the purposes of this Agreement, intellectual property rights embody:

(a) copyright, including copyright in computer programmes and in databases;

(b) rights related to copyright;

(c) patent rights;

(d) trademarks;

(e) trade names in so far as these are protected as exclusive property rights in the domestic law concerned;

(f) designs;

(g) layout- designs (topographies) of integrated circuits;

(h) geographical indications;

(i) plant varieties; and

(j) protection of undisclosed information.

6. For the purposes of this Agreement, protection of intellectual property includes protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection of Industrial Property (as revised by the Stockholm Act 1967) (hereinafter referred to as "Paris Convention").

Article 197. General Principles

1. Having regard to the provisions of this Title, each Party may, in formulating or amending its laws and regulations, make use of the exceptions and flexibilities permitted by the multilateral intellectual property agreements, particularly when adopting measures necessary to protect public health and nutrition, and to guarantee access to medicines.

2. The Parties recognise the importance of the Declaration of the Fourth Ministerial Conference in Doha and especially the Doha Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the WTO Ministerial Conference and its subsequent developments. In this sense, in interpreting and implementing the rights and obligations under this Title, the Parties shall ensure consistency with this Declaration.

3. The Parties shall contribute to the implementation and respect of the Decision of the WTO General Council of 30 August 2003, on paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol Amending the TRIPS Agreement, done at Geneva on 6 December 2005.

4. The Parties also recognise the importance of promoting the implementation of Resolution WHA 61.21 Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, adopted by the World Health Assembly on 24 of May 2008.

5. In accordance with the TRIPS Agreement, no provision of this Title will prevent a Party from adopting any measure necessary to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

6. The Parties recognise that technology transfer contributes to the strengthening of national capabilities, with the aim to establish a sound and viable technological base.

7. The Parties recognise the impact of information and communication technologies on the usage of literary and artistic works, artistic performances, phonogram productions and broadcasts and, therefore, the need to provide adequate protection of copyright and related rights in the digital environment.

Article 198. National Treatment

Each Party shall accord to the nationals of another Party treatment no less favourable than that it accords to its own nationals with regard to the protection (69) of intellectual property, subject to the exceptions already provided for in Articles 3 and 5 of the TRIPS Agreement.

(69) For the purposes of Articles 198 and 199 'protection' shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Title.

Article 199. Most Favoured Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Party to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of the other Parties, subject to the exceptions provided for in Articles 4 and 5 of the TRIPS Agreement.

Article 200. Exhaustion

Each Party shall be free to establish its own regime for exhaustion of intellectual property rights, subject to the provisions of the TRIPS Agreement.

Chapter 2. Protection of Biodiversity and Traditional Knowledge

Article 201.

1. The Parties recognise the importance and value of biological diversity and its components and of the associated traditional knowledge, innovations and practices of indigenous and local communities (70). The Parties furthermore reaffirm their sovereign rights over their natural resources and recognise their rights and obligations as established by the CBD with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilization of these genetic resources.

2. The Parties recognise the past, present and future contribution of indigenous and local communities to the conservation and sustainable use of biological diversity and all of its components and, in general, the contribution of the traditional knowledge (71) of their indigenous and local communities to the culture and to the economic and social development of nations.

3. Subject to their domestic legislation, the Parties shall, in accordance with Article 8(j) of the CBD respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, and promote their wider application conditioned to the prior informed consent of the holders of such knowledge, innovations and practices, and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

4. In accordance with Article 15 paragraph 7 of the CBD, the Parties reaffirm their obligation to take measures with the aim of sharing in a fair and equitable way the benefits arising from the utilization of genetic resources. The Parties also recognise that mutually agreed terms may include benefit-sharing obligations in relation to intellectual property rights arising from the use of genetic resources and associated traditional knowledge.

5. Colombia and the EU Party will collaborate in further clarifying the issue and concept of misappropriation of genetic resources and associated traditional knowledge, innovation and practices so as to find, as appropriate and in accordance with the provisions of international and domestic law, measures to address this issue.

6. The Parties shall cooperate, subject to domestic legislation and international law, to ensure that intellectual property rights are supportive of, and do not run counter to, their rights and obligations under the CBD, in so far as genetic resources and associated traditional knowledge of the indigenous and local communities located in their respective territories are concerned. The Parties reaffirm their rights and obligations under Article 16 paragraph 3 of the CBD in relation to countries providing genetic resources, to take measures with the aim to provide access to and transfer of technology which makes use of such resources, upon mutually agreed terms. This provision shall apply without prejudice to the rights and obligations under Article 31 of the TRIPS Agreement.

7. The Parties acknowledge the usefulness of requiring the disclosure of the origin or source of genetic resources and associated traditional knowledge in patent applications, considering that this contributes to the transparency about the uses of genetic resources and associated traditional knowledge.

8. The Parties will provide, in accordance with their domestic law, for applicable effects of any such requirement so as to support compliance with the provisions regulating access to genetic resources and associated traditional knowledge, innovations and practices.

9. The Parties will endeavour to facilitate the exchange of information about patent applications and granted patents related to genetic resources and associated traditional knowledge, with the aim that in the substantive examination, particularly in determining prior art, such information can be considered.

10. Subject to the provisions of Chapter 6 (Cooperation) of this Title, the Parties will cooperate on mutually agreed terms in the training of patent examiners in reviewing patent applications related to genetic resources and associated traditional knowledge.

11. The Parties recognise that data bases or digital libraries which contain relevant information constitute useful tools for patentability examination of inventions related to genetic resources and associated traditional knowledge.

12. In accordance with applicable international and domestic law, the Parties agree to collaborate in the application of domestic frameworks on access to genetic resources and associated traditional knowledge, innovations and practices.

13. The Parties may, by mutual agreement, review this Chapter subject to the results and conclusions of multilateral discussions.

(70) Where applicable, 'indigenous and local communities' encompasses Afro American descendants.

(71) Without prejudice to the implementation of this Chapter, the Parties acknowledge that the concept of traditional knowledge is discussed in relevant international fora.

Chapter 3. Provisions Concerning Intellectual Property Rights

Section 1. Trademarks

Article 202. International Agreements

1. The Parties shall abide by the rights and obligations existing under the Paris Convention and the TRIPS Agreement.

2. The European Union and Colombia shall accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989 (hereinafter referred to as the "Madrid Protocol") within 10 years from the signature of this Agreement. Peru and Ecuador shall make all reasonable efforts to adhere to the Madrid Protocol.

3. The European Union and Peru shall make all reasonable efforts to comply with the Trademark Law Treaty adopted in Geneva on 27 October 1994 (hereinafter referred to as the "Trademark Law Treaty"). Colombia shall make all reasonable efforts to adhere to the Trademark Law Treaty.

Article 203. Registration Requirements

Any sign, or any combination of signs, capable of distinguishing goods or services of one undertaking from those of other undertakings, can constitute a trademark in the market. Such signs may be constituted particularly by words, including combinations of words, personal names, letters, numbers, figurative elements, sounds and combinations of colours, as well as by any combination of such signs. Where signs are not intrinsically capable of distinguishing the relevant goods or services, a Party may make registrability dependent upon distinctiveness acquired through use. A Party may require, as a condition of registration, that signs be visually perceptible.

Article 204. Registration Procedure

1. The Parties shall use the classification established in the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks adopted in Nice on 15 June 1957, and its amendments in force, to classify the goods and services to which the trademarks are applied for.

2. Each Party (72) shall provide for a system for the registration of trademarks in which each final decision taken by the relevant trademark administration is duly reasoned and in writing. Reasons for the refusal to register a trademark shall be communicated in writing to the applicant, who will have an opportunity to contest such refusal and to appeal the final decision thereof before court. Each Party shall provide for the possibility to oppose trademark applications. Such opposition

proceedings shall be adversarial. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.

(72) In the case of the EU Party, the obligations provided for in this paragraph, shall apply to the European Union only with respect to its Community trademark.

Article 205. Well-known Trademarks

The Parties shall co-operate with the purpose of making protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and Article 16.2 and 16.3 of the TRIPS Agreement, effective.

Article 206. Exceptions to the Rights Conferred by a Trademark

1. Provided that the legitimate interests of the right holders of the trademarks and of third parties are taken into account, each Party shall provide as a limited exception (73) to the rights conferred by a trademark, for the fair use in the course of trade of its own name and address, or descriptive terms concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or the rendering of the services or other characteristics of the goods or services.

2. Each Party shall also provide for limited exceptions allowing a person to use the trademark where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts, provided that it is used in accordance with honest practices in industrial or commercial matters.

(73) A limited exception is understood to be the one that allows third parties to use in the market a descriptive term without the need for obtaining the consent of the right-holder provided that such use is done in good faith and does not constitute use as a trademark.

Section 2. Geographical Indications

Article 207. Scope of Application of this Section

With respect to the recognition and protection of geographical indications which are originating in the territory of a Party, the following applies:

(a) geographical indications are, for the purposes of this Title, indications consisting of the name of a particular country, region or locality or a name which, without being that of a particular country, region or locality, refers to a particular geographical area, and which identify a product as originating therein where a given quality, reputation or other characteristic of the product is exclusively or essentially due to the geographical environment in which it is produced, with its inherent natural and human factors;

(b) geographical indications of a Party to be protected by another Party shall only be subject to this Title if they are recognised and declared as such in the country of origin;

(c) each Party shall protect geographical indications for agricultural and foodstuff products, wines, spirit drinks and aromatised wines listed in Appendix 1 of Annex XIII (Lists of Geographical Indications) in accordance with the procedures referred to in Article 208 as from the entry into force of this Agreement;

(d) geographical indications for products other than agricultural foodstuffs products, wines, spirit drinks or aromatised wines listed in Appendix 1 of Annex XIII (Lists of Geographical Indications) may be protected according to the laws and regulations applicable in each Party. The Parties acknowledge that geographical indications listed under Appendix 2 of Annex XIII (Lists of Geographical Indications) are protected as geographical indications in the country of origin;

(e) the use (74) of geographical indications related to products originating in the territory of a Party shall be reserved exclusively for producers, manufacturers or craftsmen with production or manufacturing establishments in the locality or region within the Party identified or evoked by that indication;

(f) if a Party adopts or maintains a system for authorising the use of geographical indications, such system shall only apply to the geographical indications originating in its territory;

(g) public or private bodies that represent beneficiaries of geographical indications or bodies designated for that purpose

shall have at their disposal mechanisms allowing for the effective control over the use of protected geographical indications; and

(h) geographical indications protected in accordance with this Title shall not, for as long as they remain protected in their country of origin, be considered the common or generic designation of the product that they identify.

(74) For the purposes of this subparagraph, 'use' shall mean the production, and/or processing and/or preparation of the product identified by the geographical indication.

Article 208. Established Geographical Indications

1. Having completed an objection procedure and having examined the geographical indications of the European Union listed in the Appendix 1 of Annex XIII (Lists of Geographical Indications) which have been registered by the EU Party, the signatory Andean Countries will protect such geographical indications according to the level of protection laid down in this Section.

2. Having completed an objection procedure and having examined the geographical indications of a signatory Andean Country listed in the Appendix 1 of Annex XIII (Lists of Geographical Indications) which are registered by such signatory Andean Country, the EU Party will protect the same according to the level of protection laid down in this Section.

Article 209. Addition of New Geographical Indications

1. The Parties agree on the possibility to add new geographical indications to Appendix 1 of Annex XIII (Lists of Geographical Indications) after having completed the objection procedure and after having examined the geographical indications as referred to in Article 208.

2. A Party wishing to add a new geographical indication to its list in Appendix 1 of Annex XIII (Lists of Geographical Indications) shall submit to another Party a request in that regard within the framework of the Sub-committee on Intellectual Property.

3. The date of the application of protection shall be the date of transmission of the application to another Party. This exchange of information shall be done under the framework of the Sub-committee on Intellectual Property.

Article 210. Scope of Protection of Geographical Indications

1. The geographical indications of a Party listed in the Appendix 1 of Annex XIII (Lists of Geographical Indications), as well as those added pursuant to Article 209, shall be protected by another Party at least against:

(a) any commercial use of such protected geographical indication:

(i) for identical or like products not compliant with the product specification of the geographical indication; or

(ii) in so far as such use exploits the reputation of the geographical indication;

(b) any other non-authorised use (75) of geographical indications other than those identifying wines, aromatized wines or spirits drinks that creates confusion, including even in cases where the name is accompanied by indications such as style, type, imitation and other similar that creates confusion to the consumer; without prejudice to this subparagraph, if a Party amends its legislation in order to protect geographical indications other than those identifying wines, aromatised wines and spirit drinks at a higher level than the protection provided for in this Agreement, that Party shall extend such protection to the geographical indications listed in Appendix 1 of Annex XIII (Lists of Geographical Indications);

(c) in case of geographical indications that identify wines, aromatised wines or spirit drinks, any misuse, imitation or evocation, at least, for products of this kind, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar;

(d) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, or the advertising material relating to the product concerned, liable to convey a false impression as to its origin; and (e) any other practice liable to mislead the consumer as to the true origin of the product.

2. Where a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of that

third country, and the name is homonymous with a geographical indication of another Party, the latter shall be informed and be given the opportunity to comment before the name becomes protected.

3. The Parties shall notify each other if a geographical indication ceases to be protected in its country of origin.

(75) The term ‘non authorized use’ may cover any misuse, imitation or evocation.

Article 211. Relationship with Trademarks

1. The Parties shall refuse to register or shall provide for invalidation of a trademark that corresponds to any of the situations referred to in Article 210, paragraph 1, in relation to a protected geographical indication for identical or like products, provided an application to register the trademark is submitted after the date of application for protection of the geographical indication in its territory.

2. Without prejudice to the grounds for refusing the protection of geographical indications provided for in its domestic legislation, no Party shall have the obligation to protect a geographical indication where, in the light of a reputed or well-known trademark, protection is liable to mislead consumers as to the true identity of the product.

Article 212. General Rules

1. The Parties may exchange additional information regarding the technical specifications of the products protected by geographical indications in Appendix 1 of Annex XIII (Lists of Geographical Indications) in the Sub-committee on Intellectual Property. Furthermore, the Parties may facilitate the exchange of information regarding the control bodies in their territory.

2. Nothing in this Section shall oblige a Party to protect a geographical indication which is not or ceases to be protected in its country of origin. The Party that is the originating territory of a geographical indication shall notify the other Parties when such geographical indication ceases to be protected in its country of origin.

3. A product specification referred to in this Section shall be that approved, including any amendments also approved, by the authorities of the Party in the territory of which the product originates.

Article 213. Cooperation and Transparency

1. In the context of the Subcommittee on Intellectual Property, a Party may request from another Party information regarding the compliance of products bearing geographical indications protected pursuant to this Section with the respective product specifications and their modifications, as well as contact points for facilitating controls, if necessary.

2. With regard to geographical indications of another Party protected pursuant to this Section, each Party may make publicly available the respective product specifications, or a summary thereof, as well as contact points for facilitating controls.

Article 214.

This Section shall not prejudice the rights already recognised by the Parties in free trade agreements to third countries.

Section 3. Copyright and Related Rights

Article 215. Protection Granted

1. The Parties shall protect, in a manner as effective and uniform as possible, the rights of authors in their literary and artistic works. The Parties shall also protect the rights of performers, producers of phonograms and broadcasting organisations, with respect to their performances, phonograms and broadcasts, respectively.

2. The Parties shall comply with existing rights and obligations by virtue of the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 (hereinafter referred to as the "Berne Convention"), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done on 26 October of 1961 (hereinafter referred to as the "Rome Convention"), the WIPO Copyright Treaty (hereinafter referred to as the "WCT"), and the WIPO Performances and Phonograms Treaty (hereinafter referred to as the "WPPT"), both adopted on 20 December 1996.

Article 216. Moral Rights

1. Independently of the economic rights of the author, and even after the transfer of such rights, the author shall have the right to claim, at least, authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, such work, which would be prejudicial to his/her honour or reputation.

2. The rights granted to the author in accordance with paragraph 1 shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed.

3. Independently of the economic rights of a performer, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his/her performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his/her performances that would be prejudicial to his/her reputation. This paragraph applies without prejudice to other moral rights recognised by domestic legislation.

4. The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Party where protection is claimed.

5. Each Party may provide for a degree of protection of moral rights higher than that provided for under this Article.

Article 217. Collective Management Societies

The Parties recognise the importance of collective management societies for copyright and related rights, in order to ensure an effective management of the rights entrusted to them, as well as an equitable distribution of remunerations collected, which are proportional to the utilization of the works, performances or phonograms, in a context of transparency and good management practices, according to the domestic legislation of each Party.

Article 218. Duration of Rights of Authors

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death.

2. In the case of a work of joint authorship, the term of protection referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. In the case of anonymous or pseudonymous works, the term of protection granted by this Agreement shall expire 70 years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection applicable shall be that laid down in paragraph 1. If the author of an anonymous or pseudonymous works discloses his identity during the above-mentioned period of time, the term of protection applicable shall be that laid down in paragraph 1. No Party shall be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for 70 years.

4. Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 70 years from the end of the calendar year of authorised publication, or, failing such authorised publication, within at least 50 years from the making of the work, 70 years from the end of the calendar year of its making.

5. The term of protection of cinematographic or audiovisual works shall be at least 70 years after the work has been made available to the public with the consent of the author, or, failing such an event, within at least 50 years from the making of such work, at least 70 years after its making. Alternatively, a Party may establish that the term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last person designated as author under domestic law.

Article 219. Duration of Related Rights

1. The term of protection to be granted to performers under this Agreement shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed.

2. The term of protection to be granted to producers of phonograms under this Agreement shall last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram was published, or failing such

publication within 50 years from fixation of the phonogram, at least 50 years from the end of the year in which the fixation was made.

3. The term of protection granted to broadcasting organisations shall last for at least 50 years from the end of the calendar year in which the broadcast took place.

Article 220. Broadcasting and Communication to the Public

1. For the purposes of this Article:

- "broadcasting" means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organisation or with its consent; and

- "communication to the public" of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of paragraph 3, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

2. Performers shall enjoy the exclusive right of authorising, as regards their performances:

(a) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

3. Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public. The Parties shall establish in their domestic legislation that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. The Parties may enact domestic legislation that, in the absence of an agreement between the performer and the producer of a phonogram, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

4. Each Party shall provide performers with the exclusive right to authorise or prohibit, in relation to their fixed performances:

(a) direct or indirect reproduction;

(b) distribution through sale or other transfer of ownership;

(c) rental to the public of the original and copies thereof; and

(d) making available to the public by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

5. Where performers have transferred the right of making available or the right of rental, a Party may provide that performers retain the unwaivable right to obtain an equitable remuneration, which may be collected by a collecting society duly authorised by law, in accordance with its domestic law.

6. The Parties may recognise to performers of audiovisual works an unwaivable right to obtain an equitable remuneration for broadcasting or for any communication to the public of their performances fixed, remuneration which may be collected by a collecting society, duly authorised by law, in accordance with domestic law.

7. The Parties may provide in their domestic law, limitations or exceptions to rights of performers of audiovisual works, in certain special cases which do not conflict with the normal exploitation of the performances, and do not unreasonably prejudice the legitimate interests of the performers.

8. Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit the re-transmission of their broadcasts by at least any wireless means.

Article 221. Protection of Technological Measures

The Parties shall comply with the provisions of Article 11 of the WCT and Article 18 of the WPPT.

Article 222. Protection of Rights Management Information

The Parties shall comply with the provisions of Article 12 of the WCT and Article 19 of the WPPT.

Article 223. Resale Right of Artists In Works of Arts

1. Without prejudice to Article 14 ter (2) of the Berne Convention, each Party shall provide the author of a work of art, and on his/her death to his/her successors in title, with an inalienable and unwaivable right to receive a royalty based on the sale price obtained for the resale of the work subsequent to the first transfer of the work by the author.

2. The right referred to in paragraph 1 shall apply, in accordance with the domestic legislation, to all acts of resale made by auction or through art market professionals, such as salesrooms, art galleries, or other dealers in works of art.

Section 4. Designs

Article 224. International Agreements

The Parties shall make all reasonable efforts to accede to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs adopted in Geneva on 2 July 1999.

Article 225. Requirements for Protection of Designs (76)

1. Each Party shall provide for the protection of independently created designs that are new. When the legislation of a Party so provides, individual character of such designs may also be required. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this Section.

2. A design applied to, or incorporated in, a product which constitutes a component part of a complex product shall only be considered protectable according to paragraph 1 if the component part, once it has been incorporated into the complex product (77), remains visible during normal use (78) of the latter, and to the extent that those visible features of the component part fulfil in themselves the requirements to be protectable.

(76) For the purposes of this Section, the European Union also grants protection to the unregistered design when it meets the requirements of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, as last amended by Council Regulation (EC) No 1891/2006 of 18 December 2006.

(77) For the purposes of this Section 'complex product' means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product.

(78) For the purposes of this Section 'normal use' in this context means use by the end user, excluding maintenance, servicing or repair work.

Article 226. Rights Conferred by Registration

1. The holder of a registered design shall have the exclusive right at least to prevent third parties not having his/her consent, from making, offering for sale, selling, importing, exporting, stocking such a product or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.

2. The holder of a registered design shall also have the right to take legal action against any person who produces or markets a product whose design only presents minor differences with respect to the protected design or where appearance is the same as the latter protected design.

Article 227. Term of Protection

The duration of protection of an industrial design shall amount to, at least, 10 years from the date of the submission of the application for registration. The Parties may implement a longer term of protection in their domestic legislation.

Article 228. Exceptions

1. The Parties may establish limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

2. Design protection shall not extend to designs dictated entirely by technical or functional considerations.

3. A design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated, or to which it is applied, to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

4. A design does not confer rights when it is contrary to public order or morality.

Article 229. Relationship to Copyright

The subject matter of protection of a design right may be protected under copyright legislation if the conditions for such protection are met. The extent to which, and the conditions under which, such protection is conferred, including the level of originality required, shall be determined by each Party.

Section 5. Patents

Article 230.

1. The Parties shall comply with Articles 2 through 9 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done in Budapest on 28 April 1977 and amended on 26 September 1980.

2. The European Union shall make all reasonable efforts to comply with the Patent Law Treaty, adopted at Geneva on 1 June 2000 (hereinafter referred to as the "PLT"). The signatory Andean Countries shall make all reasonable efforts to accede to the PLT.

3. When the marketing of a pharmaceutical or agricultural chemical product (79) in a Party requires to obtain an authorisation by its competent authorities in such matters, such Party shall make its best efforts to process the corresponding application expeditiously with a view to avoiding unreasonable delays. The Parties shall cooperate and provide mutual assistance to achieve this objective.

4. With respect to any pharmaceutical product that is covered by a patent, each Party may, in accordance with its domestic legislation, make available a mechanism to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the first marketing approval of that product in that Party. Such mechanism shall confer all of the exclusive rights of a patent, subject to the same limitations and exceptions applicable to the original patent.

(79) For the purposes of this Title, 'agricultural chemical products' means, for the EU Party, active substances and preparations containing one or more active substances, put up in the form in which they are supplied to the user, intended to: (a) protect plants or plant products against all harmful organisms or prevent the action of such organisms, in so far as such substances or preparations are not otherwise defined below; (b) influence the life processes of plants, other than as a nutrient (e.g. plant growth regulators); (c) preserve plant products, in so far as such substances or products are not subject to special Council or Commission provisions on preservatives; (d) destroy undesirable plants; or (e) destroy parts of plants, check or prevent undesirable growth of plants.

Section 6. Protection of Data of Certain Regulated Products

Article 231.

1. Each Party shall protect undisclosed test or other data related to safety and efficacy of pharmaceutical products (80) and agricultural chemical products, in accordance with Article 39 of the TRIPS Agreement and its domestic legislation.

2. According to paragraph 1, and subject to paragraph 4, when a Party requires, as a condition for approving the marketing of pharmaceutical or of agricultural chemical products which contain new chemical entities, the submission of undisclosed test or other data related to safety and efficacy, that Party shall grant an exclusivity period normally of five years from the date of marketing approval in the territory of that Party for pharmaceutical products, and 10 years for agricultural chemical products, period during which a third party may not commercialise a product based on such data, unless he/she presents

proof of the explicit consent of the holder of the protected information or his/her own test data. (81)

3. For the purpose of this Article, a "new chemical entity" is the one which has not been previously approved in the territory of the Party for its use in a pharmaceutical or chemical agricultural product, pursuant to its domestic legislation. Accordingly, the Parties need not apply this Article with respect to pharmaceutical products that contain a chemical entity that has been previously approved in the territory of the Party.

4. The Parties may regulate:

(a) exceptions for reasons of public interest, situations of national emergency or extreme urgency, when it is necessary to allow access to those data to third parties; and

(b) abbreviated marketing approval procedures in their territory, relying on a marketing approval granted by another Party. In such case, the period of exclusive use of the data submitted in connection with obtaining the approval shall begin from the date of the first marketing approval relied on, when the approval is granted within six months from the filing of a complete application.

5. With regard to agricultural chemical products, the Parties may provide procedures which make it possible to remit or refer to the undisclosed information on safety and efficacy related to tests and studies that involve vertebrate animals. During the term of protection, the interested person in using such information shall compensate the holder of the protected information. The costs of such compensation shall be determined in a fair, equitable, transparent and non-discriminatory manner. The right to this compensation shall apply for as long as the protection of the undisclosed information on safety and efficacy lasts.

6. In accordance with the provisions of Article 197 paragraph 5, the protection provided for in this Article does not prevent a Party from adopting measures in response to the abuse of intellectual property rights or practices which unreasonably restrain trade.

(80) For Colombia and the EU Party, this protection will include data protection of biological and biotechnology products. For Peru and Ecuador, the protection of the undisclosed information of such products shall be granted against disclosure and the practices that are contrary to honest commercial practices, in accordance with Article 39.2 of the TRIPS Agreement, in absence of specific legislation regarding thereof.

(81) This provision shall apply with respect to Ecuador five years after the entry into force of the Protocol of Accession to this Agreement to take account of the accession of Ecuador.

Section 7. Plant Varieties

Article 232.

The Parties shall cooperate to promote and ensure the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "UPOV Convention"), as revised on 19 March 1991 (82), including the optional exception to the right of the breeder as referred to in Article 15(2) of such Convention.

(82) At the moment of the signature of the Protocol of Accession to this Agreement to take account of the accession of Ecuador, the International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised on 23 October 1978, is in force in Ecuador.

Section 8. Unfair Competition

Article 233.

1. Each Party shall grant effective protection against unfair competition in accordance with Article 10 bis of the Paris Convention. For this purpose, any act carried out in respect of industrial property in the course of trade that is contrary to honest commercial practices shall be considered unfair in accordance with the domestic legislation of each Party.

2. In accordance with the domestic legislation of each Party, this Article may be applied without prejudice to the protection granted under this Title.

Chapter 4. Enforcement of Intellectual Property Rights

Section 1. General Provisions

Article 234.

1. Without prejudice to their rights and obligations under the TRIPS Agreement, and in particular of its Part III, each Party shall provide for measures, procedures and remedies as established under this Chapter, which are necessary to ensure the enforcement of intellectual property rights as defined in Article 196, subparagraphs 5(a) to 5(i).

2. The provisions under this Chapter shall include measures, procedures and remedies that are expeditious, effective, and proportionate, and constitute a deterrent to further infringements and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

3. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

4. This Chapter does not create for the Parties any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, or any obligation with respect to the distribution of resources for enforcement of intellectual property rights and the enforcement of law in general.

Section 2. Civil and Administrative Remedies and Procedures

Article 235.

Articles 237, 239 and 240 shall apply in respect of acts carried out on a commercial scale, and if permitted by their domestic law, the Parties may apply the measures provided for in such Articles in respect of other acts.

Article 236. Entitled Applicants

Each Party shall recognise as persons entitled to seek application of the measures, initiate the procedures and apply for remedies referred to in this Section and in Part III of the TRIPS Agreement:

(a) holders of intellectual property rights in accordance with its applicable law;

(b) all other persons authorised to use those rights, in particular the exclusive licensee and other licensees, in so far as permitted by and in accordance with its applicable law;

(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of its applicable law; and

(d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with its applicable law.

Article 237. Evidence

Each Party shall take such measures as are necessary, in the case of an infringement of an intellectual property right committed on a commercial scale, to enable its competent judicial authorities to order the opposing party, where appropriate and upon application by a party, the communication of relevant banking, financial or commercial documents under his/her control, subject to the protection of confidential information.

Article 238. Measures for Preserving Evidence

Each Party shall provide that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, upon application by a person, who has presented reasonably available evidence enough to support his/her claims that his/her intellectual property right has been infringed or is about to be infringed, order prompt, effective and proportionate provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include, among others, the detailed description, with or without the taking of samples, or if the domestic legislation permits, the physical seizure of the alleged infringing goods, and, in

appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary, without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

Article 239. Right of Information

1. Each Party shall provide that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:

(a) was found in possession of the infringing goods on a commercial scale;

(b) was found to be using the infringing services on a commercial scale;

(c) was found to be providing on a commercial scale services used in infringing activities; or

(d) was indicated by the person referred to in subparagraphs (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services in question.

2. The information referred to in paragraph 1 shall, as appropriate, comprise:

(a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;

(b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:

(a) grant the right holder rights to receive fuller information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article; (c) govern responsibility for misuse of the right of information;

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit his own participation or that of his close relatives in an infringement of an intellectual property right; or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

Article 240. Provisional and Precautionary Measures

1. In accordance with its domestic legislation, each Party shall provide that its judicial authorities may, upon request of the applicant, issue an interlocutory injunction against any party, intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to subject such continuation to the lodging of guarantees intended to ensure the compensation of the right holder.

2. An interlocutory injunction may also be issued to order the seizure or withdrawal of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

Article 241. Corrective Measures

1. Each Party shall take the necessary measures to provide that its competent judicial authorities may order, upon request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort to the infringer, the withdrawal, definitive removal from the channels of commerce or destruction of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order the destruction of materials and implements principally used in the creation or manufacture of those goods.

2. The judicial authorities shall order that measures, as referred to in paragraph 1, shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

Article 242. Injunctions

Without prejudice to the provisions of Article 44.2 of the TRIPS Agreement, each Party shall provide that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue an injunction against the infringer aimed at prohibiting the continuation of the infringement. Where provided for in the domestic law of a Party, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance (83).

(83) The Parties shall ensure that the measures referred in this paragraph may also apply against those whose services have been used to infringe intellectual property rights to the extent they have been involved in the process.

Article 243. Alternative Measures

Each Party may provide, in accordance with its domestic legislation, that in appropriate cases and upon request of the person liable to be subject to the measures provided for in Article 241 and/or Article 242, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 241 and/or Article 242 if that person acted unintentionally and without negligence, if execution of the measures in question would cause such person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article 244. Damages

1. Each Party shall provide that when setting the damages, its judicial authorities:

(a) take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or

(b) as an alternative to subparagraph (a), may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in an infringing activity, the Parties may provide that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

Article 245. Legal Costs

Each Party shall ensure that reasonable and proportionate legal costs and other procedural expenses, including attorney's fees, incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, except for equity or other reasons, in accordance with domestic legislation.

Article 246. Publication of Judicial Decisions

Each Party shall take the necessary measures to ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, upon request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. The Parties may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

Article 247. Presumption of Authorship or Ownership

For the purposes of applying the measures, procedures and remedies provided for under this Agreement in relation to the enforcement of copyright and related rights:

(a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner. This subparagraph shall be applicable even if such name is a pseudonym, where the pseudonym

adopted by the author leaves no doubt as to his/her identity;

(b) subparagraph (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

Article 248. Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in the relevant provisions of this Section.

Article 249. Border Measures

1. Each Party shall, unless otherwise provided for in this Article, adopt procedures [74] to enable a right holder, who has valid grounds for suspecting that the import, export, or transit of goods infringing a copyright or a trademark right [75] may take place, to lodge an application in writing with competent authorities, for the suspension by the customs authorities of the release into free circulation or for the detention of such goods. The Parties will evaluate the application of these measures for goods suspected of infringing a geographical indication.

2. Each Party shall provide that when the customs authorities, in the course of their actions, have sufficient grounds for suspecting that goods infringe a copyright or a trademark right, such authorities may suspend ex officio the release of the goods or detain them in order to enable the right holder to submit, subject to the domestic law of each Party, a judicial or administrative action in accordance with paragraph 1.

3. Any right or obligation established in Part III, Section 4 of the TRIPS Agreement concerning the importer shall be also applicable to the exporter or to the consignee of the goods.

Section 3. Liability of Intermediary Service Providers

Article 250. Use of Services of Intermediaries

The Parties recognise that the services of intermediaries may be used by third parties for infringing activities. To ensure the free movement of information services and, at the same time, to enforce copyright and related rights in the digital environment, each Party shall provide for the measures set out in this Section for intermediary service providers where they are in no way involved with the information transmitted.

Article 251. Liability of Intermediary Service Providers: "mere Conduit"

1. Where the service that is provided consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, each Party shall ensure that the service provider is not liable for the information transmitted, on condition that such provider does not:

(a) initiate the transmission;

(b) select the receiver of the transmission; and

(c) select or modify the information contained in the transmission.

2. The acts of transmission and provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for a period longer than is reasonably necessary for the transmission.

3. This Section shall not affect the possibility for a court or administrative authority, in accordance with the legal system of each Party, of requiring the service provider to terminate or prevent an infringement.

Article 252. Liability of Intermediary Service Providers: "caching"

1. Where the service that is provided consists of the transmission in a communication network of information provided by a recipient of the service, each Party shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the onward transmission of the information to other recipients of the service upon their request, on condition that such provider:

(a) does not modify the information;

(b) complies with conditions on access to the information;

(c) complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;

(d) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and

(e) acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

2. This Section shall not affect the possibility for a court or administrative authority, in accordance with the legal systems of each Party, of requiring the service provider to terminate or prevent an infringement.

Article 253. Liability of Intermediary Service Providers: "hosting"

1. Where the service that is provided consists of the storage of information provided by a recipient of the service, each Party shall ensure that the service provider is not liable for the information stored upon request of a recipient of the service, on condition that such provider:

(a) does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

(b) acts expeditiously to remove or to disable access to the information, upon obtaining such knowledge or awareness.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Section shall not affect the possibility for a court or administrative authority, in accordance with the legal system of each Party, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for a Party to establish procedures governing the removal or disabling of access to information.

Article 254. No General Obligation to Monitor

1. A Party shall not impose a general obligation on service providers, when providing the services covered by Articles 251, 252 and 253, to monitor the information which they transmit or store, nor a general obligation to actively seek for facts or circumstances indicating illegal activities.

2. The Parties may establish obligations for service providers to promptly inform the competent public authorities of alleged illegal activities undertaken or of information provided by recipients of their service, or obligations to communicate to the competent authorities, upon request of such authorities, information enabling the identification of recipients of their service with whom they have storage agreements.

Chapter 5. Transfer of Technology

Article 255.

1. The Parties agree to exchange experiences and information on their domestic and international practices and policies affecting transfer of technology (86). Such exchange shall include, in particular, measures to facilitate information flows, business partnerships, licensing and subcontracting deals on a voluntary basis. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for the promotion of lasting relations between the scientific communities of the Parties, the intensification of activities to promote linkage, innovation and technology transfer between the Parties, including issues such as the relevant legal framework and development of human capital.

2. The Parties shall facilitate and encourage research, innovation, technological development activities, transfer and diffusion of technology between them, aimed at, among others, enterprises, governmental entities, universities, research and technological centres. The Parties will promote capacity building, exchange and training of personnel in this area to the extent of their possibilities.

3. The Parties shall encourage mechanisms for the participation of entities and experts of their respective systems of

science, technology and innovation, in projects and joint research, development and innovation networks, with the purpose of strengthening their capacities in science, technology and innovation. Those mechanisms may include:

(a) joint research, innovation and technological development activities as well as educational projects;

(b) visits and exchanges of scientists, researchers, trainees, and technical experts;

(c) joint organisation of scientific seminars, conferences, symposia and workshops, as well as the participation of experts in those activities;

(d) joint research, development, and innovation networks;

(e) exchange and sharing of equipment and materials;

(f) promotion of the evaluation of joint work, and the dissemination of results; and

(g) any other activity agreed upon by the Parties.

4. The Parties should consider establishing mechanisms for the exchange of information about research, development and innovation projects financed from public resources.

5. The EU Party shall facilitate and promote the use of incentives granted to institutions and enterprises in its territory for the transfer of technology to institutions and enterprises from the signatory Andean Countries in order to enable them to establish a viable technological base.

6. Each Party shall make its best efforts to evaluate the possibilities to facilitate the entry and exit from its territory of data and equipment related to or used in research, innovation and technological development activities by the Parties under the provisions of this Article, pursuant to the legislative and regulatory provisions applicable in the territory of each Party, including the regimes regarding export control of dual use products and its related legislation.

(86) For greater clarity, transfer of technology includes access to and use of technology as well as the process of generation of technology

Chapter 6. Cooperation

Article 256.

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Title.

2. Subject to the provisions of Title XIII (Technical Assistance and Trade Capacity-Building), areas of cooperation include, but are not limited to, the following activities:

(a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement, as well as exchange of experiences between the EU Party and each signatory Andean Country on legislative progress;

(b) exchange of experiences between the EU Party and each signatory Andean Country on enforcement of intellectual property rights;

(c) capacity-building and exchange and training of personnel;

(d) promotion and dissemination of information on intellectual property rights in, inter alia, business circles and civil society as well as public awareness of consumers and right holders;

(e) enhancement of institutional cooperation, for example between intellectual property offices; and

(f) actively promoting awareness and education of the general public in intellectual property rights policies.

Article 257. Sub-committee on Intellectual Property

1. The Parties hereby establish a Sub-committee on Intellectual Property to follow up on the implementation of the provisions of this Title. The Sub-committee will meet at least once a year, except if the Parties agree otherwise. These meetings may be carried out through any agreed means.

2. The Sub-committee on Intellectual Property will adopt its decisions by consensus. This Sub-committee may adopt its rules of procedure. The Sub-committee on Intellectual Property will be responsible for assessing the information referred to in Article 209 and for proposing to the Trade Committee the modification of Appendix 1 of Annex XIII (Lists of Geographical Indications) as regards to geographical indications.

Title VIII. Competition

Article 258. Definitions

1. For the purposes of this Title:

- "competition laws" means:

(a) for the EU Party, Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), and their implementing regulations and amendments;

(b) for Colombia, Ecuador and Peru, the following, as appropriate:

(i) domestic laws related to competition (87) adopted or maintained in compliance with Article 260, and their implementing regulations and amendments; and/or

(ii) Andean Community legislation applying in Colombia or Peru and its implementing regulations and amendments;

- "competition authority" and "competition authorities" mean:

(a) for the EU Party, the European Commission; and,

(b) for Colombia, Ecuador and Peru, their respective national competition authorities.

2. Nothing in this Article shall affect competences assigned by the Parties to their respective regional and national authorities for the effective and coherent implementation of their respective competition laws.

(87) For Ecuador, Article 336 of the Constitución de la Republica del Ecuador (Constitution of Ecuador), establishing the obligation for the State to ensure transparency and efficiency in the markets and foster competition, and the Ley Orgánica de Regulación y Control del Poder de Mercado (Organic Law on the Regulation and Control of Market Forces).

Article 259. Objectives and Principles

1. Acknowledging the importance of free competition and that anti-competitive practices have the potential of distorting the proper operation of markets, affecting economic and social development, economic efficiency and consumer welfare, and undermining the benefits arising from the implementation of this Agreement, the Parties shall apply their respective competition policies and laws.

2. The Parties agree that the following practices are inconsistent with this Agreement to the extent that such practices may affect trade and investment between the Parties:

(a) any agreement, decision, recommendation or concerted practice, which has the purpose or effect of impeding, restricting, or distorting competition in accordance with their respective competition laws;

(b) the abuse of a dominant position in accordance with their respective competition laws; and

(c) concentrations of companies which significantly impedes effective competition, particularly as a result of the creation or strengthening of a dominant position in accordance with their respective competition laws.

3. The Parties recognise the importance of cooperation and coordination of their respective competition authorities to further effective competition policy and law enforcement, including notifications under Article 262, consultations, exchange of information, technical assistance and promotion of competition.

4. The Parties shall support and promote measures to strengthen competition in their respective jurisdictions in accordance with the objectives of this Agreement.

Article 260. Competition Laws, Authorities and Policies

1. Each Party shall maintain competition laws that address the practices referred to in Article 259 paragraph 2, and adopt appropriate actions with respect to such practices.

2. Each Party shall establish or maintain competition authorities responsible and appropriately equipped for the effective enforcement of their respective competition laws.

3. The Parties recognise the importance of applying their respective competition laws in a transparent, timely and non-discriminatory manner, respecting the principle of due process and the rights of defence.

4. Each Party shall maintain its autonomy to establish, develop and implement their respective competition policies.

Article 261. Cooperation and Exchange of Information

1. The Parties shall make their best efforts to cooperate through their competition authorities in matters related to the implementation of competition laws.

2. The competition authority of a Party may request cooperation from the competition authority of another Party regarding enforcement activities. This cooperation shall not prevent the Parties concerned from taking independent decisions.

3. The competition authorities may exchange information in order to facilitate the effective application of their respective competition laws.

4. Whenever competition authorities exchange information pursuant to this Article, they shall take into account the restrictions imposed by their respective legislation.

5. If a Party considers that an anticompetitive practice as defined in Article 259 paragraph 2 carried out within the territory of another Party has an adverse effect within the territory of both Parties or on trade relations between those Parties, that Party may request that such other Party initiate the enforcement activities established under its legislation. 6. The competition authorities may further strengthen cooperation by appropriate means or instruments in accordance with their interests and capacities.

Article 262. Notification

1. The competition authority of a Party shall notify the competition authority of another Party, administrative resources allowing, with respect to the enforcement activities of competition laws that the notifying competition authority considers may affect important interests (88) of that other Party.

2. The notification pursuant to paragraph 1 shall be made as soon as possible, to the extent that this does not violate the competition law of the Party making the notification or affect any investigation underway.

(88) In particular, when the notification could contribute to achieve the objectives of the enforcement activities of the notified competition authority.

Article 263. Designated Monopolies and State Enterprises

1. Nothing in this Agreement shall prevent a Party from establishing or maintaining public or private monopolies and state enterprises according to its legislation (89).

2. Each Party shall ensure that state enterprises and designated monopolies are subject to its competition laws in so far as the application of such laws does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. With regard to state enterprises and designated monopolies, no Party shall adopt or maintain any measure contrary to the provisions of this Title which distorts trade and investment between the Parties.

(89) For greater certainty, the Parties understand that 'monopolios rentísticos' established in accordance with Article 336 of the Political Constitution of Colombia are included in the category of designated monopolies and state enterprises.

Article 264. Technical Assistance

1. In order to achieve the objectives set out in this Title, the Parties acknowledge the importance of technical assistance and shall promote initiatives with a view to developing a competition culture.

2. Initiatives pursuant to paragraph 1 shall focus, among others, on strengthening the technical and institutional capacities as regards the implementation of competition policy and enforcement of competition laws, training of human resources and exchange of experiences.

Article 265. Consultations

1. For the purposes of fostering understanding between the Parties or addressing any specific issues arising under this Title, a Party, upon request of another Party, shall accept the initiation of consultations, without prejudice to pursuing any action in accordance with its competition laws and while maintaining its full autonomy as regards the final decision on the issues subject to consultations.

2. The Party requesting consultations pursuant to paragraph 1 shall indicate how the issue affects the proper operation of markets, as well as consumers and trade and investment between the Parties. The requested Party shall accord the fullest consideration to the concerns of the requesting Party.

Article 266. Dispute Settlement

No Party may have recourse to dispute settlement under Title XII (Dispute Settlement) with respect to any issue arising under this Title.

Title IX. Trade and Sustainable Development

Article 267. Context and Objectives

1. Recalling the Rio Declaration on Environment and Development and the Agenda 21 adopted by the United Nations Conference on Environment and Development on 14 June 1992, the Millennium Development Goals adopted in September 2000, the Johannesburg Declaration on Sustainable Development and its Plan of Implementation adopted on 4 September 2002, and the Ministerial Declaration on Attainment of Full, Productive Employment and Decent Work adopted by the United Nations Economic and Social Council in September 2006, the Parties reaffirm their commitment to sustainable development, for the welfare of present and future generations. In this regard, the Parties agree to promote international trade in such a way as to contribute to the objective of sustainable development and to work to integrate and reflect this objective in their trade relationship. In particular, the Parties underline the benefit of considering trade-related labour (90) and environmental issues as part of a global approach to trade and sustainable development.

2. In view of paragraph 1 the objectives of this Title are, among others, to:

(a) promote dialogue and cooperation between the Parties with a view to facilitating the implementation of the provisions of this Title and strengthening the relationship between trade and labour and environmental policies and practices;

(b) strengthen compliance with the labour and environmental legislation of each Party, as well as with the commitments deriving from the international conventions and agreements referred to in Articles 269 and 270, as an important element to enhance the contribution of trade to sustainable development;

(c) strengthen the role of trade and trade policy in the promotion of the conservation and sustainable use of biological diversity and of natural resources, as well as in the reduction of pollution in accordance with the objective of sustainable development;

(d) strengthen the commitment to labour principles and rights in accordance with the provisions of this Title, as an important element to enhance the contribution of trade to sustainable development;

(e) promote public participation in the matters covered under this Title.

3. The Parties reaffirm their full resolve to fulfil their commitments under this Title taking into account their own capacities, in particular technical and financial capacities.

4. The Parties reiterate their commitment to address global environmental challenges, in accordance with the principle of common but differentiated responsibilities.

5. The provisions of this Title shall not be interpreted or used as a means of arbitrary or unjustifiable discrimination between

the Parties or as a disguised restriction to trade or investment.

(90) When 'labour' is referred to in this Title, it includes the issues relevant to the strategic objectives of the International Labour Organisation.

Article 268. Right to Regulate and Levels of Protection

Recognising the sovereign right of each Party to establish its domestic policies and priorities on sustainable development, and its own levels of environmental and labour protection, consistent with the internationally recognised standards and agreements referred to in Articles 269 and 270, and to adopt or modify accordingly its relevant laws, regulations and policies; each Party shall strive to ensure that its relevant laws and policies provide for and encourage high levels of environmental and labour protection.

Article 269. Multilateral Labour Standards and Agreements

1. The Parties recognise international trade, productive employment and decent work for all as key elements for managing the process of globalisation, and reaffirm their commitments to promote the development of international trade in a way that contributes to productive employment and decent work for all.

2. The Parties will dialogue and cooperate as appropriate on trade-related labour issues of mutual interest.

3. Each Party commits to the promotion and effective implementation in its laws and practice and in its whole territory of internationally recognised core labour standards as contained in the fundamental Conventions of the International Labour Organisation (hereinafter referred to as the "ILO"):

(a) the freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

4. The Parties will exchange information on their respective situation and advancements as regards the ratification of priority ILO Conventions as well as other conventions that are classified as up-to-date by the ILO.

5. The Parties stress that labour standards should not be used for protectionist trade purposes and in addition, that the comparative advantage of any Party should in no way be called into question.

Article 270. Multilateral Environmental Standards and Agreements

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment. In this context, the Parties shall dialogue and cooperate as appropriate with respect to trade-related environmental issues of mutual interest.

2. The Parties reaffirm their commitment to effectively implement in their laws and practices the following multilateral environmental agreements: the Montreal Protocol on Substances that Deplete the Ozone Layer adopted on 16 September of 1987, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal adopted on 22 March 1989, the Stockholm Convention on Persistent Organic Pollutants adopted on 22 May 2001, the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed on 3 March 1973 (hereinafter referred to as "CITES"), the CBD, the Cartagena Protocol on Biosafety to the CBD adopted on 29 January 2000, the Kyoto Protocol to the United Nations Framework Convention on Climate Change adopted on 11 December 1997 (hereinafter referred to as "Kyoto Protocol") and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade adopted on 10 September 1998 (91).

3. The Trade Committee may recommend the extension of the application of paragraph 2 to other multilateral environmental agreements following a proposal by the Sub-committee on Trade and Sustainable Development.

4. Nothing in this Agreement shall limit the right of a Party to adopt or maintain measures to implement the agreements referred to in paragraph 2. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

(91) For the purposes of this paragraph, multilateral environmental agreements referred to shall encompass those protocols, amendments, annexes and adjustments ratified by the Parties.

Article 271. Trade Favouring Sustainable Development

1. The Parties reaffirm that trade should promote sustainable development. The Parties also recognise the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity, as well as the value of greater coherence between trade policies, on the one hand, and labour policies on the other.

2. The Parties shall strive to facilitate and promote trade and foreign direct investment in environmental goods and services.

3. The Parties agree to promote best business practices related to corporate social responsibility.

4. The Parties recognise that flexible, voluntary, and incentive-based mechanisms can contribute to coherence between trade practices and the objectives of sustainable development. In this regard, and in accordance with its respective laws and policies, each Party will encourage the development and use of such mechanisms.

Article 272. Biological Diversity

1. The Parties recognise the importance of the conservation and sustainable use of biological diversity and all of its components as a key element for the achievement of sustainable development. The Parties confirm their commitment to conserve and sustainably use biological diversity in accordance with the CBD and other relevant international agreements to which the Parties are party.

2. The Parties will continue to work towards meeting their international targets of establishing and maintaining a comprehensive, effectively managed, and ecologically representative national and regional system of terrestrial and marine protected areas by 2010 and 2012, respectively, as fundamental tools for the conservation and sustainable use of biological diversity. The Parties also recognise the importance of protected areas for the welfare of populations settled in those areas and their buffer zones.

3. The Parties will endeavour to jointly promote the development of practices and programmes aiming at fostering appropriate economic returns from the conservation and sustainable use of biological diversity.

4. The Parties recognise their obligation in accordance with the CBD to, subject to their domestic legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application conditioned to the prior informed consent of the holders of such knowledge, innovations and practices, and encourage the fair and equitable sharing of the benefits arising from the utilisation of such knowledge, innovation and practices.

5. Recalling Article 15 of the CBD, the Parties recognise the sovereign rights of States over their natural resources, and that the authority to determine access to genetic resources rests with the national governments and is subject to their domestic legislation. Furthermore, the Parties recognise that they shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses and not to impose restrictions that run counter to the objectives of the CBD, and that access to genetic resources shall be subject to the prior informed consent of any Party providing such resources, unless otherwise determined by that Party. The Parties will take appropriate measures, in accordance with the CBD, with the aim of sharing in a fair and equitable way and upon mutually agreed terms, the results of research and development and the benefits arising from the commercial and other utilisation of genetic resources with the Party providing such resources.

6. The Parties shall strive to strengthen and to enlarge the capacity of national institutions responsible for the conservation and sustainable use of biological diversity, through instruments such as the strengthening of capacities and technical assistance.

Article 273. Trade In Forest Products

In order to promote the sustainable management of forest resources, the Parties recognise the importance of having practices that, in accordance with domestic legislation and procedures, improve forest law enforcement and governance and promote trade in legal and sustainable forest products, which may include the following practices:

(a) the effective implementation and use of CITES with regard to timber species that may be identified as endangered, in accordance with the criteria of and in the framework of such Convention;

(b) the development of systems and mechanisms that allow verification of the legal origin of timber products throughout the marketing chain;

(c) the promotion of voluntary mechanisms for forest certification that are recognised in international markets;

(d) transparency and the promotion of public participation in the management of forest resources for timber production; and

(e) the strengthening of control mechanisms for timber production, including through independent supervision institutions, in accordance with the legal framework of each Party.

Article 274. Trade In Fish Products

1. The Parties recognise the need to conserve and manage fish resources in a rational and responsible manner, in order to ensure their sustainability.

2. The Parties recognise the need to cooperate in the context of Regional Fisheries Management Organisations (hereinafter referred to as "RFMO"), of which they are part, in order to:

(a) revise and adjust the fishing capacity for fishery resources, including those affected by overfishing, to ensure that the fishing practices are commensurate to the fishing possibilities available;

(b) adopt effective tools for the monitoring and control, such as observer schemes, vessel monitoring schemes, transhipment control and port state control, in order to ensure full compliance with applicable conservation measures;

(c) adopt actions to combat illegal, unreported and unregulated (IUU) fishing; to this end, the Parties agree to ensure that vessels flying their flags conduct fishing activities in accordance with rules adopted within the RFMO, and to sanction vessels under their domestic legislation, in case of any violation of the said rules.

Article 275. Climate Change

1. Bearing in mind the United Nations Framework Convention on Climate Change (hereinafter referred to as "UNFCCC") and the Kyoto Protocol, the Parties recognise that climate change is an issue of common and global concern that calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, for the benefit of present and future generations of mankind.

2. The Parties are resolved to enhance their efforts regarding climate change, which are led by developed countries, including through the promotion of domestic policies and suitable international initiatives to mitigate and to adapt to climate change, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions, and taking particularly into account the needs, circumstances, and high vulnerability to the adverse effects of climate change of those Parties which are developing countries.

3. The Parties also recognise that the effect of climate change can affect their current and further development, and therefore highlight the importance of increasing and supporting adaptation efforts, especially in those Parties which are developing countries.

4. Considering the global objective of a rapid transition to low-carbon economies, the Parties will promote the sustainable use of natural resources and will promote trade and investment measures that promote and facilitate access, dissemination and use of best available technologies for clean energy production and use, and for mitigation of and adaptation to climate change.

5. The Parties agree to consider actions to contribute to achieving climate change mitigation and adaptation objectives through their trade and investment policies, inter alia by:

(a) facilitating the removal of trade and investment barriers to access to, innovation, development, and deployment of goods, services and technologies that can contribute to mitigation or adaptation, taking into account the circumstances of developing countries;

(b) promoting measures for energy efficiency and renewable energy that respond to environmental and economic needs and minimise technical obstacles to trade.

Article 276. Migrant Workers

The Parties recognise the importance of promoting equality of treatment in respect of working conditions, with a view to eliminating any discrimination in respect thereof to any worker, including migrant workers legally employed in their territories.

Article 277. Upholding Levels of Protection

1. No Party shall encourage trade or investment by reducing the levels of protection afforded in its environmental and labour laws. Accordingly, no Party shall waive or otherwise derogate from its environmental and labour laws in a manner that reduces the protection afforded in those laws, to encourage trade or investment.

2. A Party shall not fail to effectively enforce its environmental and labour laws through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.

3. The Parties recognise the right of each Party to a reasonable exercise of discretion with regard to decisions on resource allocation relating to investigation, control and enforcement of domestic environmental and labour regulations and standards, while not undermining the fulfilment of the obligations undertaken under this Title.

4. Nothing in this Title shall be construed to empower the authorities of a Party to undertake labour and environmental law enforcement activities in the territory of another Party.

Article 278. Scientific Information

The Parties recognise the importance, when preparing and implementing measures aimed at protecting health and safety at work or the environment which affect trade between the Parties, of taking into account scientific and technical information and relevant international standards, guidelines or recommendations, while acknowledging that, where there are threats of serious or irreversible damage, the lack of full scientific certainty should not be used as a reason for postponing protective measures (92).

(92) Peru and Ecuador interpret this Article against the background of Principle 15 of the Rio Declaration on Environment and Development.

Article 279. Review of Sustainability Impacts

Each Party commits to review, monitor and assess the impact of the implementation of this Agreement on labour and environment, as it deems appropriate, through its respective domestic and participative processes.

Article 280. Institutional and Monitoring Mechanism

1. Each Party shall designate an office within its administration that shall serve as contact point to the other Parties for the purposes of implementing trade-related aspects of sustainable development and channelling all matters and communications that may arise in relation to this Title.

2. The Parties hereby establish a Sub-committee on Trade and Sustainable Development. The Sub-committee on Trade and Sustainable Development shall comprise high level representatives from the administrations of each Party, responsible for labour, environmental and trade matters.

3. Notwithstanding paragraph 2, the Sub-committee on Trade and Sustainable Development shall meet in sessions in which only the EU Party and one of the signatory Andean Countries participate when the subject relates exclusively to the bilateral relationship between the EU Party and such signatory Andean Country, including those matters addressed within the framework of Governmental Consultations provided for under Article 283 and the Group of Experts established under Article 284.

4. The Sub-committee on Trade and Sustainable Development shall meet within the first year after the date this Agreement enters into force, and thereafter as necessary, to oversee the implementation of this Title, including cooperation activities referred to in Article 286, and to discuss matters of common interest related to this Title. This Sub-committee shall establish its own rules of procedure and adopt decisions by consensus.

5. The work of the Sub-committee on Trade and Sustainable Development shall be based on dialogue, effective cooperation, furthering of commitments and initiatives under this Title and seeking mutually satisfactory solutions to any difficulties that may arise.

6. The following are functions of the Sub-committee of Trade and Sustainable Development:

(a) to carry out the follow-up of this Title and identify actions for the achievement of the objectives of sustainable development;

(b) to submit to the Trade Committee, when it deems it appropriate, recommendations for the proper implementation and make the best use of this Title;

(c) to identify areas of cooperation and verify the effective implementation of cooperation, without prejudice to Article 326;

(d) to assess, when it deems it appropriate, the impact of the implementation of this Agreement on labour and environment; and

(e) to resolve any other matter within the scope of application of this Title, without prejudice to the mechanisms set out in Articles 283, 284 and 285.

7. The Sub-committee on Trade and Sustainable Development shall promote transparency and public participation in its work. Accordingly, decisions of this Sub-committee, as well as any report on matters related to the implementation of this Title that it may prepare, shall be made public, unless the Sub-committee decides otherwise. Furthermore, the Sub-committee shall be open to receive and consider inputs, comments or views from the public on matters related to this Title.

Article 281. Domestic Mechanisms

Each Party shall consult domestic labour and environment or sustainable development committees or groups, or create such committees or groups when they do not exist. Such committees or groups may submit opinions and make recommendations on the implementation of this Title, including on their own initiative, through the respective internal channels of the Parties. The procedures for the constitution and consultation of such committees or groups, which shall have a balanced representation of representative organisations in the areas mentioned above, shall be in accordance with domestic law.

Article 282. Dialogue with Civil Society

1. Subject to Article 280 paragraph 3, the Sub-committee on Trade and Sustainable Development shall convene once a year, unless otherwise agreed by the Parties, a session with civil society organisations and the public at large, in order to carry out a dialogue on matters related to the implementation of this Title. The Parties shall agree on the procedure for such sessions with civil society no later than one year following the entry into force of this Agreement.

2. In order to promote a balanced representation of relevant interests, the Parties shall allow all stakeholders in the areas set out in Article 281 the opportunity to participate in the sessions. The summaries of these sessions shall be publicly available.

Article 283. Governmental Consultations (93)

1. A Party may request consultations to another Party regarding any matter of mutual interest arising under this Title, by delivering a written request to the contact point of that Party. The requested Party shall reply expeditiously.

2. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through dialogue and consultations. Where relevant, subject to the agreement of both consulting Parties, they shall seek information or views of any person, organisation or body that may contribute to the examination of the matter at issue, including the international organisations or bodies of the agreements referred to in Articles 269 and 270.

3. If a consulting Party deems that the matter needs further discussion, that Party may request that the Sub-committee on Trade and Sustainable Development be convened to consider the matter by delivering a written request to the contact point of the other consulting Party. The Sub-committee on Trade and Sustainable Development shall convene promptly and endeavour to agree on a resolution of the matter. Unless the Sub-committee decides otherwise, its conclusions shall be made public.

4. The Sub-committee on Trade and Sustainable Development shall periodically publish reports describing the outcome of completed consultation procedures, and when it deems it appropriate, reports about ongoing consultations.

(93) The Parties participating in governmental consultations foreseen in this Title (hereinafter referred to as a 'consulting Party' or 'consulting Parties') shall be, on the one hand, the European Union, and on the other hand one signatory Andean Country. A signatory Andean Country

may not request consultations to another signatory Andean Country.

Article 284. Group of Experts

1. Unless the consulting Parties agree otherwise, a consulting Party may, after 90 days of the delivery of a request for consultations, request that a Group of Experts be convened to examine the matter that has not been satisfactorily addressed through governmental consultations under Article 283.

2. The Group of Experts selected according to the procedures set out in paragraphs 3 and 4 shall determine whether a Party has fulfilled its obligations under this Title.

3. At the entry into force of this Agreement, the Parties shall submit to the Trade Committee a list of at least 15 persons with expertise on the issues covered by this Title, of which at least five shall not be nationals of any Party and who shall be available to serve as chairperson of the Group of Experts. Such list shall be endorsed at the first meeting of the Trade Committee. The experts shall be independent of, and not take instructions from, any of the Parties.

4. Each Party to a procedure (94) shall select one expert from the list of experts within 30 days of the receipt of the request for the establishment of a Group of Experts. The Parties to the procedure may agree to appoint experts not included in the list to serve in the Group of Experts when they deem it necessary. If a Party to the procedure fails to select its expert within such period, the other Party to the procedure shall select from the list of experts a national of the Party that has failed to select an expert. The two selected experts shall agree on the chairperson, who shall not be a national of either Party to the procedure. In case of disagreement, the chairperson shall be selected by lot. The Group of Experts shall be established within 40 days following the date of receipt of the request for its establishment.

5. The Parties to the procedure may present submissions to the Group of Experts. The Group of Experts may request and receive written submissions or any other information from organisations, institutions, and persons with relevant information or specialised knowledge, including written submissions or information from the relevant international organisations and bodies, on matters concerning the international conventions and agreements referred to in Articles 269 and 270.

6. At the entry into force of this Agreement, the Parties shall submit to the Trade Committee, for adoption at its first meeting, rules of procedure, for the Group of Experts.

(94) 'a Party to a procedure' shall be understood as a consulting Party which participates in a procedure before a Group of Experts.

(95) The Group of Experts in issuing its recommendations will take into account the multilateral context of obligations under agreements and conventions referred to in Articles 269 and 270.

Article 285. Report of the Group of Experts (95)

1. The Group of Experts shall, within 60 days after the last expert is selected, present to the Parties to the procedure an initial report that contains its preliminary conclusions on the matter. The Parties to the procedure may submit written comments to the Group of Experts on the initial report within 15 days following its presentation. After examining the written comments, the Group of Experts may reconsider the initial report. The final report of the Group of Experts shall address any argument presented by the Parties to the procedure in their written comments.

2. The Group of Experts shall present to the Parties to the procedure, its final report, including its recommendations, within 45 days from the date in which the initial report is presented pursuant to paragraph 1. The Parties to the procedure shall release a non-confidential version of the final report to the public within 15 days of its issuance.

3. The Parties to the procedure may agree to extend the time limits in paragraphs 1 and 2.

4. The Party to the procedure concerned shall inform the Sub-committee on Trade and Sustainable Development of its intentions as regards the recommendations of the Group of Experts, including the presentation of an action plan to implement the recommendations. The Sub-committee on Trade and Sustainable Development shall monitor the implementation of the measures that such Party has determined.

5. This Title is not subject to Title XII (Dispute Settlement).

(95) The Group of Experts in issuing its recommendations will take into account the multilateral context of obligations under agreements and conventions referred to in Articles 269 and 270.

Article 286. Cooperation on Trade and Sustainable Development

Taking into account the cooperative approach of this Title as well as the provisions of Title XIII (Technical Assistance and Trade-Capacity Building), the Parties recognise the importance of cooperation activities that contribute to the implementation and better use of this Title and, in particular, to the improvement of policies and practices related to labour and environmental protection as set out in its provisions. Such cooperation activities should cover activities in areas of mutual interest, such as:

(a) activities related to the evaluation of impacts of this Agreement on environment and labour, including activities aimed at improving the methodologies and indicators for such evaluation;

(b) activities related to the investigation, monitoring and effective implementation of fundamental ILO Conventions and multilateral environmental agreements, including trade-related aspects;

(c) studies related to levels and standards of labour and environment protection and mechanisms to monitor such levels;

(d) activities related to the adaptation to, and mitigation of, climate change, including activities related to the reduction of emissions from deforestation and forest degradation ("REDD");

(e) activities related to aspects of the international climate change regime with relevance for trade, including trade and investment activities to contribute to the achievement of the objectives of the UNFCCC;

(f) activities related to the conservation and sustainable use of biological diversity, as addressed in this Title;

(g) activities related to the determination of the legal origin of forest products, voluntary forestry certification schemes and traceability of different forestry products;

(h) activities to encourage best practices for sustainable forest management;

(i) activities related to trade in fishery products, as addressed in this Title;

(j) exchange of information and experiences related to the promotion and implementation of good practices of corporate social responsibility; and

(k) activities related to trade-related aspects of the ILO Decent Work Agenda, including on the interlinkages between trade and productive employment, core labour standards, social protection and social dialogue.

Title X. Transparency and Administrative Proceedings

Article 287. Cooperation to Promote Transparency

The Parties shall cooperate in relevant bilateral and multilateral fora with a view to increasing transparency in trade-related matters.

Article 288. Publication

1. Each Party shall ensure that its measures of general application, including laws, regulations, judicial decisions, procedures and administrative rulings, relating to any matter covered by this Agreement are promptly published or otherwise made readily available to interested persons in such a manner as to allow them to become acquainted with them.

2. Each Party, to the extent possible, shall provide opportunities for interested persons to comment on any proposed law, regulation, procedure or administrative ruling of general application relating to any matter covered by this Agreement and shall examine such comments, provided they are relevant.

3. The information referred to under paragraph 1 of this Article shall be considered to have been provided by a Party when the information has been made available by appropriate notification to the WTO or when the information has been made available on an official, public and freely accessible website of that Party.

Article 289. Confidential Information

Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 290. Exchange of Information

1. Upon request of another Party, and to the extent legally possible, a Party, through its Agreement Coordinator, shall provide information and reply promptly to any question relating to any matter that might substantially affect this Agreement.

2. Whenever, according to this Agreement, a Party provides information to another Party that it has designated as confidential, such Party shall treat that information as confidential.

3. Upon request of a Party, the Agreement Coordinator of another Party shall indicate the office or official responsible for any matter pertaining to the implementation of this Agreement and provide the required support to facilitate communication with the requesting Party.

Article 291. Administrative Proceedings

Each Party shall administer in a consistent, impartial and reasonable manner all measures of general application referred to in Article 288, paragraph 1. To this end, in applying those measures to particular persons, goods, services or establishments of another Party in specific cases, each Party shall:

(a) provide, whenever possible and in accordance with its domestic law, the persons directly affected by a proceeding, with reasonable notice when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) ensure, such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and (c) ensure that its procedures are based on, and in accordance with, its domestic law.

Article 292. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative action related to trade-related matters covered by this Agreement. Such tribunals or procedures shall be independent of the office or authority entrusted with administrative enforcement and those responsible for them shall be impartial and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by its domestic law, on the record compiled by the administrative authority.

3. Subject to appeal or further review as provided for in its domestic law, each Party shall ensure that any such decision shall be implemented by, and shall govern the practice of, the office or authority competent with respect to the administrative action at issue.

Article 293. Transparency on Subsidies

1. For the purposes of this Agreement, a subsidy related to trade in goods is a measure which falls under the definition set out in Article 1.1 of the Subsidies Agreement and is specific within the meaning of Article 2 of the latter.

2. Each Party shall ensure transparency in the area of subsidies related to trade in goods. Starting two years after the entry into force of this Agreement, each Party shall submit a report every two years to the other Parties regarding the legal basis, form, amount or budget and where possible, the recipient of subsidies granted by its government or any public body. Such report is deemed to have been provided if the relevant information is made available by the Party concerned or on its behalf on a publicly accessible website. When exchanging information, the Parties shall take into account the requirements of

professional and business secrecy.

3. The Trade Committee shall periodically review the progress made by each Party in implementing this Article.

4. The provisions of this Article are without prejudice to the rights of the Parties to apply trade remedies or to resort to dispute settlement or other appropriate action against a subsidy granted by another Party, in accordance with the relevant WTO provisions.

5. The Parties agree to exchange information upon request of any Party on matters regarding subsidies related to trade in services and to hold the first exchange of views on these issues one year after the entry into force of this Agreement.

6. This Article shall not be subject to Title XII (Dispute Settlement).

Article 294. Specific Rules

The provisions of this Title shall apply without prejudice to any specific rules established in other Titles of this Agreement.

Title XI. General Exceptions

Article 295. Security Exception

1. Nothing in this Agreement shall be construed:

(a) to require any Party to furnish or give access to any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any measure which it considers necessary for the protection of its essential security interests:

(i) relating to government procurement indispensable for national security or for national defence purposes;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iii) connected with the production of, government procurement of or trade in arms, munitions and war material and related to traffic in other goods and materials and to the supply of services or establishment as are carried out directly or indirectly for the purpose of supplying a military establishment;

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

(c) to prevent any Party from taking any measures necessary in pursuance of the obligations it has accepted for the purpose of maintaining or restoring international peace and security.

2. The Trade Committee shall be informed to the extent possible of any measure taken by a Party under subparagraphs 1(b) and 1(c) and its termination.

Article 296. Taxation

1. This Agreement shall only apply to taxation measures to the extent such application is necessary to give effect to the provisions of this Agreement.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention (96) between a Member State of the European Union and a signatory Andean Country. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of tax conventions between a Member State of the European Union and a signatory Andean Country, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing any measure which:

(a) aims at ensuring the effective and equitable imposition and collection of direct taxes;

(b) distinguishes in the application of the relevant provisions of domestic fiscal legislation, including those aimed at ensuring the imposition and collection of duties, between tax payers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested;

(c) aims at preventing the avoidance or evasion of taxes pursuant to tax provisions of conventions to avoid double taxation or other tax agreements, or domestic fiscal legislation; or

(d) is incompatible with any MFN obligation established under this Agreement, provided that the difference in treatment results from a tax convention.

4. Tax terms or concepts not defined in this Agreement are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

(96) For the purposes of this article, 'tax convention' shall be understood as a convention for the avoidance of double taxation or other international taxation agreement or arrangement.

Article 297. Balance of Payments

1. If a Party experiences serious external financial or balance-of-payments difficulties or threat thereof, that Party may adopt or maintain restrictive measures with regard to trade in goods, trade in services and establishment, including on payments or transfers related to such transactions.

2. Any restrictive measure adopted or maintained pursuant to paragraph 1 shall be non-discriminatory and of limited duration, shall not go beyond what is necessary to remedy the balance- of- payments situation, and shall be in accordance with the conditions established in the WTO Agreement and consistent with the Articles of the Agreement of the International Monetary Fund, as applicable (97).

3. The Parties shall endeavour to avoid the imposition of restrictive measures referred to in paragraph 1. In the event of the introduction or modification by a Party of such measures, such Party, shall promptly notify them to the other Parties and present, as soon as possible, a time schedule for their removal.

4. Consultations shall be held promptly within the Trade Committee. Such consultations shall assess the balance- of-payments situation of the Party adopting or maintaining restrictive measures under this Article, as well as the measures themselves, taking into account, inter alia, factors such as:

(a) the nature and extent of the balance of payments and the external financial difficulties;

(b) the external economic and trading environment; and (c) alternative corrective measures which may be available. Consultations shall address the compliance of any restrictive measure with paragraphs 2 and 3. All statistical findings and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments shall be accepted, and conclusions shall be based on the assessment by the International Monetary Fund of the balance-of-payments and the external financial situation of the Party introducing the measures.

Title XII. Dispute Settlement

Chapter 1. Objectives, Scope of Application and Definitions

Article 298. Objective

The objective of this Title is to prevent and settle any dispute between the Parties concerning the interpretation and application of this Agreement and to reach, whenever possible, a mutually satisfactory resolution on any issue that could affect its operation. In case a mutually agreed solution were not possible, the first objective of this Title will be in general to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of this Agreement.

Article 299. Scope of Application

1. Unless otherwise provided in this Agreement, the provisions of this Title shall apply with respect to any dispute concerning the interpretation and application of this Agreement, in particular when one of the Parties considers that a measure taken by another Party is or could be inconsistent with its obligations under this Agreement.

2. This Title shall not apply to disputes between signatory Andean Countries.

Article 300. Definitions

For the purposes of this Title, "party to the dispute" or "party to a dispute" and "parties to the dispute" or "parties to a dispute" means a Party or Parties to this Agreement that is party or are parties to a dispute settlement procedure under this Title.

Chapter 2. Consultations

Article 301. Consultations

1. The Parties shall endeavour to settle any dispute regarding any matter established under Article 299 entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party may seek to initiate consultations through a written request to another Party, with copy to the Trade Committee, identifying any measure at issue and the legal basis for the complaint.

3. The requested Party shall reply to the request for consultations, with copy to the Trade Committee, within 10 days following the receipt of such request. In cases of urgency, that period of time shall be five days.

4. The parties to the dispute may agree not to engage in consultations pursuant to this Article and proceed directly to the arbitration panel procedure pursuant to Article 302. Such decision shall be notified in writing to the Trade Committee no later than five days prior to the request for the establishment of an arbitration panel.

5. Unless the consulting Parties agree otherwise, consultations shall be held and deemed concluded within 30 days following the date of the receipt of the request by the requested Party and shall take place, in the territory of the requested Party. Upon agreement of the parties to the dispute, the consultations may take place by any technological means available. The consultations and all information disclosed during the consultations shall be confidential.

6. In cases of urgency, including those related to perishable goods or that otherwise concern goods or services that rapidly lose their commercial value, such as certain seasonal goods or services, consultations shall begin within 15 days following the date of receipt of the request by the requested Party and shall be deemed concluded within those 15 days.

7. During consultations each consulting Party shall deliver sufficient factual information, so as to allow a complete examination of the manner in which the measure in force or proposed, or any other issue, could affect the operation and application of this Agreement.

8. During consultations under this Article, each consulting Party shall ensure the participation of personnel of its competent governmental authorities with the relevant knowledge on the issue subject of the consultations.

9. Unless otherwise agreed by the consulting Parties, when a dispute has been subject to consultations within a sub-committee established in this Agreement, such consultations may replace consultations under this Article, provided that the measure at issue and the legal basis of the complaint had been duly identified during such consultations. Unless otherwise agreed by the consulting Parties, consultations held within a sub-committee shall be deemed concluded within 30 days following the date of receipt of the request for consultations by the requested Party.

10. Within five days following the date of receipt of the request for consultations, a Party which is not a consulting Party, and that has an interest in the matter subject to consultations, may request in writing to the consulting Parties, with a copy to the Trade Committee, its participation in the consultations. Provided that none of the consulting Parties rejects such request, such Party may participate as a third party in accordance with the rules of procedure, established under Article 315 (hereinafter referred to as "Rules of Procedure").

Chapter 3. Dispute Settlement Procedures

Article 302. Initiation of Arbitration Proceedings

1. The complaining Party may request the establishment of an arbitration panel if:

(a) the Party complained against does not reply to the request for consultations in accordance with Article 301, paragraph 3;

(b) consultations are not held within the period of time established in Article 301 paragraphs 5 or 6, as the case may be;

(c) the consulting Parties have failed to settle the dispute through consultations; or

(d) the parties to the dispute have agreed not to engage in consultations according to Article 301, paragraph 4.

2. Request for the establishment of an arbitration panel shall be made in writing to the Party complained against and to the Trade Committee. The complaining Party shall identify in its request the specific measure at issue, and shall explain how that measure constitutes a violation of the provisions of this Agreement in a manner that clearly presents the legal grounds for the complaint.

3. A Party may not request the establishment of an arbitration panel to review a proposed measure.

4. Within 10 days following the date of the receipt of the request for the establishment of an arbitration panel, a Party which is not a party to the dispute and that has a substantial interest in it, may request in writing to the parties to the dispute, with copy to the Trade Committee, its participation in the arbitration procedure. Such Party may participate as a third party in accordance with the Rules of Procedure.

Article 303. Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.

2. Within 12 days following the date of receipt of the request for the establishment of an arbitration panel by the Party complained against, each party to the dispute may appoint an arbitrator from the candidates proposed by any of the Parties for the list established in accordance with Article 304. If any of the parties to the dispute fails to appoint its arbitrator, upon request of the other party to the dispute, the arbitrator shall be selected by lot by the chairperson of the Trade Committee or his/her delegate among the candidates proposed by that party to the dispute for the list of arbitrators.

3. Unless the parties to the dispute reach an agreement concerning the chairperson of the arbitration panel within the period of time established in paragraph 2, and upon request of any of the parties to the dispute, the Chair of the Trade Committee or his/her delegate, shall select by lot the chairperson of the arbitration panel among the candidates selected to that effect in the list of arbitrators.

4. The Chair of the Trade Committee, or his/her delegate, shall select the arbitrators by lot from the list pursuant to Article 304 within five days following the date of receipt of a request submitted according to with paragraphs 2 or 3, as the case may be.

5. Notwithstanding paragraphs 2 to 4, the parties to the dispute may select as arbitrators, by mutual consent and within 10 days following the date of receipt of the request by the Party complained against, persons who are not included in the list of arbitrators, but who meet the requirements established in Article 304 paragraph 3.

6. The date of establishment of the arbitration panel shall be the date on which all the designated arbitrators have confirmed their acceptance in accordance with the Rules of Procedure.

Article 304. List of Arbitrators

1. The Trade Committee shall establish at its first meeting a list of 30 individuals who are willing and able to serve as arbitrators. The Parties shall also select by mutual agreement 10 individuals who are not nationals (98) of any of the Parties, and who shall act as chairperson of the arbitration panel.

2. The Trade Committee shall ensure that the list established in accordance with paragraph 1 is always complete. In any event, the list may be used in accordance with Article 303 even if it is not complete.

3. The arbitrators shall have specialised knowledge or experience in law, international trade, or in the settlement of disputes under international trade agreements. They shall be independent, impartial, shall have neither a direct nor indirect relationship with any of the Parties, and shall not receive instructions from any Party or from any organisation. The arbitrators shall comply with the code of conduct established in accordance with this Title (hereinafter referred to as "Code of Conduct").

4. The Trade Committee shall establish, furthermore, additional lists of 15 individuals with sectorial experience on specific subjects covered by this Agreement. To that effect, each Party shall nominate three individuals to serve as arbitrators. The Parties, by mutual agreement, shall select three candidates to chair the arbitration panel who are not nationals of any of the Parties. Each party to the dispute may choose to designate its arbitrator among those proposed by any of the Parties for a sectorial list. When resorting to the selection procedure established in Article 303 paragraph 3, the Chair of the Trade Committee, or his/her delegate, may use a sectorial list upon agreement of the parties to the dispute.

(98) For the purposes of this Title ‘national’ means a natural person that has the nationality of a Member State of the European Union or a signatory Andean Country or is a permanent resident of a Member State of the European Union or a signatory Andean Country

Article 305. Objection, Removal and Substitution

1. Any party to the dispute may object an arbitrator in cases of a justifiable doubt with respect to her/his compliance with the Code of Conduct. The decision on the objection or removal of an arbitrator shall be adopted according to the Rules of Procedure.

2. If an arbitrator is not able to participate in the proceedings, resigns, or must be replaced, her/his replacement shall be chosen according to Article 303.

Article 306. Consolidation of Arbitration Proceedings

When more than one Party requests the establishment of an arbitration panel with respect to the same measure and based on the same legal grounds, whenever possible, a single arbitration panel shall be established to examine such requests.

Article 307. Arbitration Panel Ruling

1. Arbitration panels shall notify their ruling to the parties to the dispute and to the Trade Committee within 120 days from the date of their establishment. When an arbitration panel considers that such deadline cannot be met, the chairperson of the arbitration panel must notify the parties to the dispute and the Trade Committee in writing, stating the reasons for the delay and the date on which the panel will notify its ruling. Under no circumstances should the ruling be notified later than 150 days from the date of the establishment of the arbitration panel.

2. In cases of urgency, including those related to perishable goods or that otherwise concern goods or services that rapidly lose their commercial value such as certain seasonal goods or services, the arbitration panel shall issue a ruling on whether it deems the case to be urgent within 10 days following its establishment. The arbitration panel shall notify its ruling within 60 days from the date of its establishment, and under no circumstances later than 75 days from that date.

Article 308. Implementation of the Arbitration Ruling

1. The Party complained against shall take all necessary measures to comply with the ruling of the arbitration panel without delay.

2. Within a period of 30 days from the date of receipt of the ruling, the Party complained against shall notify the complaining Party of the following:

(a) the specific measures which it considers necessary to comply with the ruling;

(b) the reasonable period to do so; and

(c) a concrete offer for temporary compensation pending full implementation of the specific measure that it considers necessary to comply with the ruling.

3. In case of discrepancies between the parties to the dispute on the content of such notification, the complaining Party may request the arbitration panel that issued the ruling to establish if the measures proposed pursuant to subparagraph 2(a) are consistent with this Agreement, if the time period to comply with the ruling is reasonable and/or whether the offer for compensation is manifestly disproportionate. The ruling shall be issued within 45 days following the submission of the request.

4. In case the original arbitration panel, or any of its members, cannot meet, the proceedings established in Article 303 shall apply. The time limit to notify the ruling shall be 45 days from the date on which the new arbitration panel has been established.

5. The reasonable period referred to in subparagraph 2(b) may be extended by mutual agreement of the parties to the dispute.

Article 309. Review of Any Measure Adopted to Comply with the Arbitration Ruling

1. The Party complained against shall notify the complaining Party and the Trade Committee of any measure adopted to put an end to the non-compliance of its obligations under this Agreement before the expiration of the reasonable period established according to Article 308, subparagraph 2(b), and paragraphs 3 or 5.

2. If the measures notified by the Party complained against in accordance with paragraph 1 are not similar to those previously notified by that Party under Article 308, subparagraph 2(a), or when the complaining Party has had recourse to arbitration under Article 308 paragraph 3 and such measures notified under paragraph 1 are not similar to those which the arbitration panel found consistent with this Agreement, and in case of disagreement between the parties to the dispute as to the existence of the notified measures or their compatibility with the Agreement, the complaining Party may request in writing to the original arbitration panel to decide on the matter. Such request shall identify the specific measures at issue and shall explain to what extent it is inconsistent with this Agreement. The arbitration panel shall notify its ruling within 30 days from the date of the request.

3. In case the original arbitration panel, or any of its members, is not available, the procedures established in Article 303 shall apply. The ruling shall be issued within 30 days from the date of establishment of the new arbitration panel.

Article 310. Temporary Remedies In Case of Non-compliance

1. If the Party complained against does not notify the adoption of any measure to comply with the ruling of the arbitration panel before the expiry of the reasonable period, or if the arbitration panel decides according to Article 309 paragraph 2 that a notified measure is inconsistent with this Agreement, the complaining Party may: (a) request the Party complained against a compensation for non-compliance, either the continuation of the temporary compensation or a different compensation, or (b) notify the Party complained against and the Trade Committee its intention to suspend concessions resulting from any provision referred to in Article 299 to a level equivalent to the nullification or impairment caused by the violation.

2. If following a period of 20 days after the expiry of the reasonable period, or following the decision by the arbitration panel that the measure notified under Article 311 paragraph 2 is inconsistent with this Agreement, the parties to the dispute are unable to reach an agreement about compensation under subparagraph 1(a), the complaining Party may notify the Party complained against and the Trade Committee of its intention to suspend benefits under any provision referred to in Article 299 in a level equivalent to the nullification or impairment caused by the violation.

3. If the Party complained against does not implement the temporary compensation established under Article 308 within a reasonable period of time (99), the complaining Party may notify the Party complained against and the Trade Committee of its intention to suspend benefits under any provision referred to in Article 299 in a level equivalent to the temporary compensation pending the implementation of the temporary compensation or the adoption of a compliance measure by the Party complained against, whichever occurs first.

4. When the complaining Party notifies its intention to suspend benefits under paragraphs 2 or 3, such Party may apply the suspension of benefits 10 days after the notification, unless the Party complained against requests arbitration under paragraph 5.

5. If the Party complained against considers that the level of suspension notified is not equivalent to the nullification or impairment caused by the violation, it may request in writing to the original arbitration panel to decide on the matter. Such request shall be notified to the complaining Party and to the Trade Committee before the expiry of the 10-day period set out in paragraph 4. The original arbitration panel shall notify its ruling on the level of suspension of benefits to the parties to the dispute and to the Trade Committee within 30 days of the date when that arbitration panel has received the request. The benefits shall not be suspended until the original arbitration panel has notified its ruling to the parties to the dispute and any suspension shall comply with such ruling.

6. In case the original arbitration panel, or any of its members, is not available, the procedures established in Article 303 shall apply. The ruling shall be issued within 45 days from the date of establishment of the new arbitration panel.

7. The compensation or the suspension of benefits under this Article shall be temporary and shall not waive the obligation of the Party complained against of its obligation to comply with the ruling. Such remedies shall apply only until any measure declared inconsistent with this Agreement has been withdrawn or modified so as to comply with the provisions of this Agreement, or the parties to the dispute have reached a mutually agreed solution.

(99) For greater certainty, the Party complained against has not implemented the temporary compensation within a reasonable period of time only in the event that the Party complained against does not initiate its internal procedure conducive to the implementation of the compensation within a reasonable period of time, or when such internal procedures result in a decision contrary to the implementation of the temporary compensation.

Article 311. Review of Any Measure Adopted after the Suspension of Benefits or

Compensation for Non-compliance

1. The Party complained against may notify at any time to the complaining Party and the Trade Committee any measure that it has adopted to comply with the ruling of the arbitration panel and of its request to the complaining Party to terminate the suspension of benefits, or its intention to terminate the application of compensation for non-compliance, as the case may be. Except in the case provided for in paragraph 2, the suspension of benefits shall terminate 30 days following such notification.

2. If the parties to the dispute are unable to reach an agreement on the compatibility of the notified measure with the provisions of this Agreement within 30 days from the date of the notification provided for under paragraph 1, any of such parties may submit a written request to the original arbitration panel to rule on the matter. Such request shall be notified simultaneously to the Party complained against and the Trade Committee. The arbitration ruling shall be notified to the parties to the dispute and the Trade Committee within 45 days from the date of such request. If the arbitration panel decides that the compliance measure is compatible with the provisions of this Agreement, the suspension of benefits shall be terminated.

3. In case the original arbitration panel, or any of its members, is not available, the procedures established in Article 303 shall apply. The ruling shall be notified within 45 days from the date of establishment of a new arbitration panel.

4. If, following the 30-day period referred to in paragraph 2, none of the parties to the dispute has requested the original arbitration panel to decide on the consistency of the measure notified under paragraph 1, and the complaining Party has not complied with its obligation of terminating the suspension of benefits, the Party complained against may suspend benefits at a level equivalent to that applied by the complaining Party, while such Party continues to suspend benefits.

Article 312. Request for Clarification of a Ruling

1. Within 10 days following the notification of the ruling, a party to the dispute may submit a request in writing to the arbitration panel, with copy to the other party to the dispute and the Trade Committee, for clarification of certain specific aspects of any determination or recommendation in the ruling that such party considers ambiguous, including those related to compliance. The other party to the dispute may submit comments on such request to the arbitration panel, with copy to the Party who submitted the original request for clarification. The arbitration panel shall respond to such request within 10 days following its receipt.

2. The submission of a request under paragraph 1 shall not affect the periods referred to in Article 308.

Article 313. Suspension and Termination of Arbitration Proceedings

1. The parties to the dispute may agree, at any time, to suspend the work of the arbitration panel during a period that shall not exceed 12 months from the date of such agreement. The parties to the dispute shall notify such agreement in writing to the chairperson of the arbitration panel, with copy to the Trade Committee. In the event of such suspension, the time limits set out in Article 307 shall be extended by the amount of time during which the work has been suspended.

2. In any case, if the work of the arbitration panel has been suspended for more than 12 months, the authority of the arbitration panel shall lapse, unless the parties to the dispute agree otherwise. If the authority of the arbitration panel lapses, nothing in this Article shall prevent a Party from initiating another arbitration proceeding on the same matter.

3. The parties to a dispute may agree to terminate arbitration proceedings at any time, through a joint written notification to the chairperson of the arbitration panel, with copy to the Trade Committee.

Chapter 4. General Provisions

Article 314. Mutually Agreed Solution

The parties to the dispute may reach a mutually agreed solution to a dispute under this Title at any time. The parties to the dispute shall jointly notify the Trade Committee of any such solution. Upon notification of the mutually agreed solution, the procedure shall be terminated.

Article 315. Rules of Procedure and Code of Conduct

1. Dispute settlement procedures under this Title shall be governed by the Rules of Procedure adopted by the Trade

Committee at its first meeting following the entry into force of this Agreement. The Trade Committee shall also adopt at such meeting the Code of Conduct for arbitrators.

2. Any hearing of the arbitration panel shall be open to the public according to the Rules of Procedure, unless otherwise agreed by the parties to the dispute.

Article 316. Information and Technical Advice

1. At the request of a party to the dispute or ex officio, the arbitration panel may obtain any information it deems appropriate, from any source, including the parties to the dispute. The arbitration panel also has the right to seek relevant opinions from experts as it deems appropriate. Any information obtained in this manner shall be delivered to each party to the dispute for their comments.

2. The arbitration panel may also allow interested non-governmental persons established in the territory of a party to the dispute, to provide amicus curiae briefs in accordance with the Rules of Procedure.

Article 317. Rules of Interpretation

Any arbitration panel shall interpret the provisions referred to in Article 299 in accordance with the customary rules of interpretation of public international law included in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969. Arbitration panel rulings cannot increase or diminish the rights and obligations contained in the provisions referred to in Article 299.

Article 318. Arbitration Panel Decisions and Rulings

1. The arbitration panel shall endeavour to adopt any decision by consensus. Nevertheless, when a decision cannot be reached by consensus, the matter at issue shall be decided by majority vote. However, in no case shall the dissenting opinions of arbitrators be published.

2. Any ruling of the arbitration panel shall be binding for the parties to the dispute and shall not create any rights or obligations for natural or juridical persons. The ruling shall establish factual decisions, the applicability of the relevant provisions of this Agreement, determinations about whether the Party concerned has complied or not with its obligations therefrom, and the basic rationale behind its decisions and conclusions.

3. The arbitration panel may, upon request of any party to the dispute, issue recommendations as to the implementation of the ruling.

4. Arbitration panel rulings shall be public, unless the parties to the dispute agree otherwise.

Article 319. Relation with Wto Rights and Choice of Forum

1. The provisions contained in this Title are without prejudice to the rights and obligations of the Parties pursuant to the WTO Agreement, including dispute settlement actions.

2. The disputes related to the same measure arising from this Agreement and by virtue of the WTO Agreement may be settled under this Title or under the DSU at the discretion of the complaining Party. Nevertheless, when a Party has requested the establishment of a panel under Article 6 of the DSU or an arbitration panel pursuant to Article 303, that Party may not initiate another proceeding on the same matter in the other forum, except when the competent body in the forum chosen has not taken a decision on the substance of the matter due to procedural or jurisdictional reasons.

3. The Parties understand that two or more disputes concern the same matter when they involve the same parties to the dispute, refer to the same measure and deal with the same substantive violation.

4. No provision in this Title shall prevent a Party from applying a suspension of benefits authorized by the Dispute Settlement Body of the WTO. The WTO Agreement shall not be invoked to prevent a Party from suspending benefits in accordance with this Title.

Article 320. Time Limits

1. Any time limit established in this Title, including the time limits for the arbitration panels to notify their rulings, shall be counted from the first day following the act or fact to which they refer.

2. Any time limit referred to in this Title may be extended by mutual agreement of the parties to the dispute.

Article 321. Modification of the Rules of Procedure and Code of Conduct

The Trade Committee may modify the Rules of Procedure and the Code of Conduct.

Article 322. Mediation Mechanism

Pursuant to Annex XIV (Mediation Mechanism for Non-tariff Measures) any Party may request another Party to enter into a mediation procedure with respect to any non-tariff measure of the requested Party related to any matter falling under Title III (Trade in Goods) which the requesting Party considers adversely affects trade.

Article 323. Good Offices, Conciliation and Mediation

1. Notwithstanding Article 322, the Parties may at any time agree to undertake, as an alternative method of dispute resolution, good offices, conciliation or mediation.

2. The alternative methods of dispute resolution referred to in paragraph 1 shall be conducted according to procedures agreed to by the Parties involved.

3. Proceedings established under this Article may begin at any time and be suspended or terminated at any time by any of the Parties involved. 4. Proceedings under this Article are confidential and without prejudice to the rights of the Parties involved in any other proceedings.

Title XIII. Technical Assistance and Trade-capacity Building

Article 324. Objectives

1. The Parties agree to strengthen cooperation that contributes to the implementation of this Agreement and to make the most of it with the aim of optimising its results, expanding opportunities and obtaining the greatest benefits for the Parties. This cooperation shall be developed within the legal and institutional framework governing cooperation relations between the Parties, one of the main objectives of which is to boost sustainable economic development that enables to achieve greater levels of social cohesion and, in particular, to reduce poverty.

2. To achieve the objectives referred to in paragraph 1, the Parties agree to attach particular importance to cooperation initiatives aimed at:

(a) improving and creating new trade and investment opportunities, fostering competitiveness and innovation, as well as the modernisation of production, trade facilitation and the transfer of technology;

(b) promoting the development of Micro and SMEs, using trade as a tool for reducing poverty;

(c) promoting fair and equitable trade, facilitating access to the benefits of this Agreement for all production sectors, the weakest in particular;

(d) strengthening commercial and institutional capacities in this field, for the implementation of this Agreement (100) and making the most of it; and

(e) addressing the needs of cooperation identified in other parts of this Agreement (101).

(100) Ecuador underlines that such initiatives should also contribute to the strengthening of production capacities and to the sustainable economic development of the Parties.

(101) In this context, Ecuador underlines the importance of also considering projects related to Chapter 4 of Title III of this Agreement.

Article 325. Scope and Means

1. Cooperation shall be carried out by means of instruments, resources and mechanisms available to the Parties to that end, according to the rules and procedures in force, and through the bodies of each Party competent to execute cooperation

relations, including those regarding trade-related cooperation.

2. Pursuant to paragraph 1, the Parties may use instruments such as exchanging information, experience and best practices, technical and financial assistance, and the joint identification, development and implementation of projects, among others.

Article 326. Trade Committee Functions Regarding Cooperation Under this Title

1. The Parties shall attach particular importance to following up on the cooperation measures put in place to contribute to the optimal execution and making the most of the benefits of this Agreement.

2. The Trade Committee shall follow up and, where appropriate, provide stimulus and guidance in relation to the main aspects of cooperation within the framework of the objectives referred to in Article 324 paragraphs 1 and 2.

3. The Trade Committee may make recommendations to the competent bodies of each Party responsible for the programming and execution of cooperation.

Title XIV. Final Provisions

Article 327. Annexes, Appendices, Declarations and Footnotes

The annexes, appendices, declarations and footnotes to this Agreement constitute an integral part thereof.

Article 328. Accession of New Member States to the European Union

1. The EU Party shall notify to the signatory Andean Countries of any request for accession of a third country to the European Union.

2. During the negotiations between the European Union and the candidate country seeking accession to the European Union, the EU Party shall: (a) provide, upon request of a signatory Andean Country, and to the extent possible, any information regarding any matter covered by this Agreement; and (b) take into account any concerns expressed by the signatory Andean Countries.

3. The EU Party shall notify the signatory Andean Countries of the entry into force of any accession to the European Union.

4. In the framework of the Trade Committee, and sufficiently in advance of the date of accession of a third country to the European Union, the EU Party and the signatory Andean countries shall examine any effects of such accession on this Agreement. The Trade Committee shall decide on any necessary adjustment or transition measures.

Article 329. Accession to this Agreement by other Member Countries of the Andean Community

1. Any Member Country of the Andean Community which is not a Party to this Agreement on the date of its entry into force between the EU Party and at least one of the signatory Andean Countries (hereinafter referred to as "applicant Andean Country") may accede to this Agreement pursuant to the conditions and procedures established in this Article.

2. The EU Party shall negotiate with the applicant Andean Country the conditions of its accession to this Agreement. In the context of these negotiations, the EU Party shall aim at preserving the integrity of this Agreement, limiting any flexibility to the negotiation of the lists of mutual concessions corresponding to Annexes I (Tariff Elimination Schedules), VII (List of Commitments on Establishment) and VIII (List of Commitments on Cross border Supply of Services) and any aspect for which such flexibility were necessary for the accession of the applicant Andean Country. The EU Party shall notify the Trade Committee of the conclusion of these negotiations for the purposes of the consultations referred to in paragraph 3.

3. The EU Party shall consult the signatory Andean Countries within the Trade Committee on any result of the accession negotiations with an applicant Andean Country that may affect the rights or obligations of the signatory Andean Countries. At the request of any Party, the Trade Committee shall review the effects of the accession of the applicant Andean Country to this Agreement and shall decide on any further measures that might be necessary.

4. The accession of an applicant Andean Country shall become effective by means of the conclusion of a protocol of accession, which shall be previously approved by the Trade Committee (102). The Parties shall undertake the internal procedures necessary for the entry into force of that protocol.

5. This Agreement shall enter into force between an applicant Andean Country and each Party on the first day of the month

following the receipt by the Depository of the last notification by the applicant Andean Country and the corresponding Party of the completion of their internal procedures required for the entry into force of the protocol of accession. This Agreement may also be provisionally applied if the protocol of accession so provides.

6. If on the date of entry into force of this Agreement between the EU Party and at least one signatory Andean Country, a Member Country of the Andean Community which has participated in the adoption of the text of this Agreement has not signed it, such country shall be entitled to sign it and shall not be considered an applicant Andean Country under paragraph 1.

(102) Notwithstanding this paragraph, the Parties understand that the lists of concessions set out in Annexes I (Tariff Elimination Schedules), VII (List of Commitments on Establishment) and VIII (List of Commitments on Cross border Supply of Services) resulting from the negotiation between the EU Party and the applicant Andean Country, shall be incorporated into the protocol of accession without requiring the approval of the Trade Committee.

Article 330. Entry Into Force

1. Each Party shall notify in writing the completion of its internal procedures required for the entry into force of this Agreement to all other Parties and to the Depositary referred to in Article 332.

2. This Agreement shall enter into force between the EU Party and each signatory Andean Country on the first day of the month following the date of receipt by the Depositary of the last notification foreseen in paragraph 1 corresponding to the EU Party and that signatory Andean Country, unless the Parties concerned have agreed on a different date.

3. Notwithstanding paragraph 2, the Parties may provisionally apply this Agreement fully or partially. Each Party shall notify the Depositary and all other Parties of the completion of the internal procedures required for the provisional application of this Agreement. The provisional application of this Agreement between the EU Party and a signatory Andean Country shall begin on the first day of the month following the date of receipt by the Depositary of the last notification of the EU Party and such signatory Andean Country.

4. Where in accordance with paragraph 3, a provision of this Agreement is applied by the Parties pending the entry into force of this Agreement, any reference in such provision to the date of entry into force of this Agreement shall be understood to refer to the date from which the Parties agree to apply that provision in accordance with paragraph 3.

Article 331. Duration and Withdrawal

1. This Agreement shall be valid for an indefinite period.

2. Any Party may withdraw from this Agreement by means of a written notification to all other Parties and the Depositary. Such withdrawal shall become effective six months after the date of receipt of such notification by the Depositary.

3. Notwithstanding paragraph 2, when a signatory Andean Country withdraws from this Agreement, this Agreement shall continue to be in force between the EU Party and the other signatory Andean Countries. This Agreement shall be terminated in case of withdrawal by the EU Party.

Article 332. Depositary

The Secretary-General of the Council of the European Union shall act as Depositary of this Agreement.

Article 333. Modifications to the Wto Agreement

The Parties understand that any provision of the WTO Agreement incorporated into this Agreement, is incorporated with any amendments which have entered into force at the time such provision is applied.

Article 334. Amendments

1. The Parties may agree in writing to any amendment to this Agreement.

2. Any amendment shall enter into force and constitute an integral part of this Agreement according to the conditions established in Article 330, mutatis mutandis.

3. The Parties may further develop the commitments undertaken in this Agreement, or broaden its scope of application, by agreeing to amendments to this Agreement or by concluding agreements on specific sectors or activities, taking into consideration the experience gained during its implementation.

Article 335. Reservations

This Agreement does not allow for reservations within the meaning of the Vienna Convention on the Law of Treaties.

Article 336. Rights and Obligations Under this Agreement

Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, other than those created between the Parties under public international law.

Article 337. Authentic Texts

This Agreement is drawn up in triplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

IN WITNESS WHEREOF, the undersigned, duly authorised, have signed this Agreement.

DONE in triplicate in Brussels, on the 26th of June of 2012.

FOR THE KINGDOM OF BELGIUM. This signature also commits the French Community, the Flemish Community Flemish Community, the German-speaking Community, the Walloon Region the Walloon Region, the Flemish Region and the Brussels-Capital Region.

FOR THE REPUBLIC OF BULGARIA,

FOR THE CZECH REPUBLIC,

FOR THE KINGDOM OF DENMARK,

FOR THE FEDERAL REPUBLIC OF GERMANY,

FOR THE REPUBLIC OF ESTONIA,

FOR IRELAND,

FOR THE HELLENIC REPUBLIC,

FOR THE KINGDOM OF SPAIN,

FOR THE FRENCH REPUBLIC,

FOR THE ITALIAN REPUBLIC,

FOR THE REPUBLIC OF CYPRUS,

FOR THE REPUBLIC OF LATVIA,

FOR THE REPUBLIC OF LITHUANIA,

FOR THE GRAND DUCHY OF LUXEMBURG,

FOR HUNGARY,

FOR MALTA,

FOR THE KINGDOM OF THE NETHERLANDS,

FOR THE REPUBLIC OF AUSTRIA,

FOR THE REPUBLIC OF POLAND,

FOR THE PORTUGUESE REPUBLIC,

FOR ROMANIA,

FOR THE REPUBLIC OF SLOVENIA,

FOR THE SLOVAK REPUBLIC,

FOR THE REPUBLIC OF FINLAND,

FOR THE KINGDOM OF SWEDEN,

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

FOR THE EUROPEAN UNION,

FOR THE REPUBLIC OF COLOMBIA

FOR THE REPUBLIC OF PERU

FOR THE REPUBLIC OF ECUADOR