FREE TRADE AGREEMENT

BETWEEN

THE REPUBLIC OF COLOMBIA

AND

THE EFTA STATES

PREAMBLE

The Republic of Colombia (hereinafter referred to as “Colombia”) on one part, and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (hereinafter referred to as "the EFTA States”) on the other part, each individual State referred to as a “Party” or collectively as the “Parties”:

RESOLVED to strengthen the special bonds of friendship and co-operation between them and desirous, by way of the removal of obstacles to trade, to contribute to the harmonious development and expansion of world trade and provide a catalyst for broader international co-operation, in particular between Europe and South America;

CONSIDERING the important links existing between Colombia and the EFTA States, in particular the *Joint Declaration on Co-operation signed in Bern* on 17 May 2006 and wishing to strengthen these links through the creation of a free trade area, thus establishing close and lasting relations;

REAFFIRMING their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law, including the principles set out in the *United Nations Charter* and the *Universal Declaration of Human Rights*;

ACKNOWLEDGING the relationship between good corporate and public sector governance and sound economic development, and affirming their support to the principles of corporate governance in the *UN Global Compact*, as well as their intent to promote transparency and prevent and combat corruption;

BUILDING on their respective rights and obligations under the *Marrakesh Agreement Establishing the World Trade Organization* (hereinafter referred to as “the WTO Agreement”) and the other agreements negotiated thereunder and other multilateral and bilateral instruments of co-operation;

REAFFIRMING their commitment to economic and social development and the respect for the fundamental rights of workers, including the principles set out in the *International Labour Organisation (ILO) Conventions* to which the Parties are party;

AIMING to create new employment opportunities, improve health and living standards and to ensure a large and steadily growing volume of real income in their respective territories through the expansion of trade and investment flows, thereby promoting broad-based economic development in order to reduce poverty;

WILLING to preserve their ability to safeguard the public welfare;

INTENDING to enhance the competitiveness of their firms in global markets;

DETERMINED to create an expanded and secure market for goods and services in their territories and to ensure a predictable legal framework and environment for trade, business and investment by establishing clear and mutually advantageous rules;

RECOGNISING that the gains from trade liberalisation should not be offset by anti-competitive practices;

RESOLVED to foster creativity and innovation by protecting intellectual property rights while maintaining a balance between the rights of the holders and the interests of the public in general, particularly in education, research, public health and access to information;

DETERMINED to implement this Agreement in a manner consistent with environmental protection and conservation, promote sustainable development, and strengthen their co-operation on environmental matters;

HAVE AGREED, in pursuit of the above, to conclude the following Free Trade Agreement (hereinafter referred to as “this Agreement”):

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1.1

Establishment of a Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the WTO *General Agreement on Tariffs and Trade 1994* (hereinafter referred to as "the GATT 1994") and Article V of the WTO *General Agreement on Trade in Services* (hereinafter referred to as "the GATS"), hereby establish a free trade area by means of this Agreement and the complementary Agreements on Agriculture, concurrently concluded between Colombia and each individual EFTA State.

ARTICLE 1.2

Objectives

The objectives of this Agreement are:

(a) to achieve the liberalisation of trade in goods, in conformity with Article XXIV of the GATT 1994;

(b) to achieve the liberalisation of trade in services, in conformity with Article V of the GATS;

(c) to substantially increase investment opportunities in the free trade area;

(d) to achieve further liberalisation on a mutual basis of the government procurement markets of the Parties;

(e) to promote competition in their economies, particularly as it relates to economic relations between the Parties;

(f) to ensure adequate and effective protection of intellectual property rights;

(g) to contribute, by the removal of barriers to trade and investment, to the harmonious development and expansion of world trade; and,

(h) to ensure co-operation related to trade capacity building, in order to expand and improve the benefits of this Agreement, specially for small and medium-sized enterprises.

ARTICLE 1.3

Geographical Scope

1. This Agreement shall, unless otherwise specified therein, apply to the territories of the Parties, in accordance with their domestic law and international law.

2. This Agreement shall not apply to the territory of Svalbard, with the exception of trade in goods.

ARTICLE 1.4

Relation to Other International Agreements

The Parties confirm their rights and obligations under the WTO Agreement and the other agreements negotiated thereunder to which they are a party and any other international agreement to which they are a party.

ARTICLE 1.5

Trade and Economic Relations Covered by this Agreement

1. The provisions of this Agreement apply to the trade and economic relations between, on the one side, each individual EFTA State and, on the other side Colombia, but not to trade relations between individual EFTA States**,** unless otherwise provided for in this Agreement.

2. As a result of the customs union established by the *Treaty of 29 March 1923 between Switzerland and the Principality of Liechtenstein,* Switzerland shall represent the Principality of Liechtenstein in matters covered thereby.

ARTICLE 1.6

Central, Regional and Local Government

Each Party shall ensure within its territory the observance of all obligations and commitments under this Agreement by its respective central, regional and local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities.

ARTICLE 1.7

Taxation

1. This Agreement shall not restrict a Party's fiscal sovereignty to adopt taxation measures, except for the disciplines referred to hereafter:

(a) Article 2.11 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article to the same extent as does Article III of the GATT 1994;

(b) Articles 4.3 (Most Favoured Nation Treatment) and 4.5 (National Treatment) to the extent relevant for taxation according to Article 4.15 (General Exceptions); and

(c) Article 5.3 (National Treatment) to the extent relevant for taxation according to Article 5.8 (Exceptions).

2. Notwithstanding paragraph 1, this Agreement shall not affect the rights and obligations of a Party under any tax convention. In the event of any inconsistency between this Agreement and such convention, the latter shall prevail to the extent of the inconsistency.

ARTICLE 1.8

Electronic Commerce

The Parties recognise the growing role of electronic commerce for trade between them. With a view to supporting provisions of this Agreement related to trade in goods and services the Parties undertake to intensify their co-operation on electronic commerce for their mutual benefit. For that purpose the Parties have established the framework contained in Annex I (Electronic Commerce).

ARTICLE 1.9

Definitions of General Application

For purposes of this Agreement, unless otherwise provided for, or clearly understood from the specific context in which it is used:

(a) "days" means calendar days;

(b) "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;

(c) "measure" means any measure by a Party whether in the form of a law, regulation, rule, procedure, requirement, provision, administrative action, or in any other form;

(d) "person" means a natural person or a juridical person.

CHAPTER 2

TRADE IN GOODS

ARTICLE 2.1

Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) "customs authority" means the authority that according to the legislation of a Party is responsible for the administration of its customs legislation;

(b) "customs duties on imports" means any duty or a charge of any kind imposed on, or in connection with, the importation of goods, including any form of surtax or surcharge, except:

(i) charges equivalent to an internal tax imposed consistently with Article III.2 of the GATT 1994;

(ii) antidumping or countervailing duties that are applied pursuant to Article VI of the GATT 1994; or

(iii) fees or other charges in connection with importation commensurate with the cost of services rendered.

(c) "customs legislation" means any legal or regulatory provision adopted by a Party, governing the import, export, or transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control.

ARTICLE 2.2

Scope

This Chapter applies to the following products traded between the Parties:

(a) products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System (hereinafter referred to as "the HS"), excluding the products listed in Annex II (Excluded Products);

(b) processed agricultural products specified in Annex III (Processed Agricultural Products) with due regard to the arrangements provided for in Chapter 3 (Processed Agricultural Products); and

(c) fish and other marine products as provided for in Annex IV (Fish and Other Marine Products).

ARTICLE 2.3

Rules of Origin and Mutual Administrative Assistance in Customs Matters

1. The provisions on rules of origin and customs procedures are set out in Annex V (Rules of Origin and Mutual Administrative Co-operation in Customs Matters).

2. The provisions on mutual administrative assistance in customs matters are set out in Annex VI (Mutual Administrative Assistance in Customs Matters).

ARTICLE 2.4

Trade Facilitation

To facilitate trade between Colombia and the EFTA States, the Parties shall:

(a) simplify, to the greatest extent possible, procedures for trade in goods and related services;

(b) promote multilateral co-operation among them in order to enhance their participation in the development and implementation of international conventions and recommendations on trade facilitation; and

(c) co-operate on trade facilitation within the framework of the Joint Committee,

in accordance with the provisions set out in Annex VII (Trade Facilitation).

ARTICLE 2.5

Establishment of a Sub-Committee on Rules of Origin, Customs Procedures and Trade Facilitation

1. A Sub-Committee on Rules of Origin, Customs Procedures and Trade Facilitation is hereby established.

2. The functions of the Sub-Committee shall be to exchange information, review developments, prepare technical amendments relating to Annexes II (Excluded

Products), III (Processed Agricultural Products), IV (Fish and Other Marine Products), V (Rules of Origin and Mutual Administrative Co-operation in Customs Matters), VI (Mutual Administrative Assistance in Customs Matters), VII (Trade Facilitation) and VIII (Dismantling of Import Duties for Industrial Products), and assist the Joint Committee.

3. The Sub-Committee shall be chaired alternatively by a representative of Colombia or an EFTA State for an agreed period of time. The chair shall be elected at the first meeting of the Sub-Committee. The Sub-Committee shall act by consensus.

4. The Sub-Committee shall report to the Joint Committee. The Sub-Committee may make recommendations to the Joint Committee on matters related to its functions.

5. The Sub-Committee shall meet as often as required. It may be convened by the Joint Committee, by the chair of the Sub-Committee on his or her own initiative, or upon request of any Party. The venue shall alternate between Colombia and an EFTA State.

6. A provisional agenda for each meeting shall be prepared by the chair in consultation with the Parties, and forwarded to them, as a general rule, not later than two weeks before the meeting.

ARTICLE 2.6

Dismantling of Import Duties

1. Upon entry into force of this Agreement, Colombia shall dismantle its customs duties on imports of products originating in EFTA States, as provided in Annexes III (Processed Agricultural Products) , IV (Fish and Other Marine Products) and VIII (Dismantling of Import Duties for Industrial Products).

2. Upon entry into force of this Agreement, the EFTA States shall eliminate all customs duties on imports of products originating in Colombia, unless otherwise provided for in Annexes III (Processed Agricultural Products) and IV (Fish and Other Marine Products).

3. At the request of a Party, consultations shall be held to consider accelerating the elimination of the customs duties set out in the respective Annexes. An agreement between the Parties to accelerate the elimination of a customs duty shall supersede any duty rate or dismantling category set out in Annexes III (Processed Agricultural Products), IV (Fish and Other Marine Products) and VIII (Dismantling of Import Duties for Industrial Products), if approved by the Parties in accordance with their internal legal requirements.

4. No new customs duties or other charges in relation to the importation of originating products to a Party shall be introduced nor shall those already applied be increased, except as provided for in this Agreement.

5. The Parties recognise that they may:

(a) following a unilateral tariff reduction, raise a customs duty to the level established in the tariff dismantling schedules of each Party, for the respective year;

(b) maintain or increase a customs duty as authorised by the WTO Dispute Settlement Body, based on the preferential duty set out in the tariff dismantling schedules of the Party concerned;

(c) increase a customs duty pursuant to Article 12.17 (Non-Implementation and Suspension of Benefits).

ARTICLE 2.7

Base Rate

1. For each product the base rate of customs duty, to which the successive reductions set out in Annexes III (Processed Agricultural Products), IV (Fish and Other Marine Products) and VIII (Dismantling of Import Duties for Industrial Products) are to be applied, shall be the most-favoured nation rate of duty applied on 1 April 2007.

2. If at any moment after the date of entry into force of this Agreement a Party reduces its applied most favored nation customs duty, that customs duty shall apply only if it is lower than the customs duty calculated in accordance with the relevant Annexes.

ARTICLE 2.8

Export Duties

1. The Parties shall, upon entry into force of this Agreement, eliminate all customs duties and other charges, including surcharges and other forms of contributions, in relation to the exportation of goods to a Party, except as provided for in Annex IX (Export Duties).

2. No new customs duties or other charges in relation to the exportation of goods to a Party shall be introduced nor shall those already applied be increased.

ARTICLE 2.9

Import and Export Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be

instituted or maintained in trade between the Parties in accordance with Article XI of the GATT 1994, which is hereby incorporated into and made part of this Agreement *mutatis mutandis*.

2. The Parties understand that paragraph 1 prohibits a Party from adopting or maintaining:

(a) export and import price requirements, except as permitted in enforcement of countervailing or anti-dumping measures and undertakings; or

(b) import licensing conditioned on the fulfillment of a performance requirement, except as provided for in Annex X (Import and Export Restrictions and National Treatment).

3. No Party shall adopt or maintain a measure that is inconsistent with the *WTO Agreement on Import Licensing Procedures.* Any new import licensing procedure and any modification of its existing import licensing procedures or list of products, shall be published whenever practicable, 21 days prior to the date when the requirement becomes effective but in any event no later than that date.

4. Paragraphs 1 and 2 shall not apply to the measures set out in Annex X (Import and Export Restrictions and National Treatment).

ARTICLE 2.10

Administrative Fees and Formalities

1. Each Party shall ensure that all fees and charges of whatever character other than import and export duties and of taxes referred to in Article III of the GATT 1994 are applied in accordance with paragraph 1 of Article VIII of the GATT 1994 and its interpretive notes.

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

3. Each Party shall make available and maintain through the Internet updated information about the fees and charges it imposes in connection with importation or exportation.

ARTICLE 2.11

National Treatment

Except as provided for in Annex X (Import and Export Restrictions and National Treatment), the Parties shall apply national treatment in accordance with Article III of

the GATT 1994, including its interpretative notes, which is hereby incorporated and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.12

State Trading Enterprises

The rights and obligations of the Parties in respect of state trading enterprises shall be governed by Article XVII of the GATT 1994 and the *Understanding on the Interpretation of Article XVII of the GATT 1994*, which are hereby incorporated into and made part of this Agreement *mutatis mutandis*.

ARTICLE 2.13

Sanitary and Phytosanitary Measures

1. The Parties confirm their rights and obligations under the WTO *Agreement on the Application of Sanitary and Phytosanitary Measures* (hereinafter referred to as "the SPS Agreement") and resulting from the decisions on the application of the SPS Agreement adopted by the WTO Committee on Sanitary and Phytosanitary Measures. For the purpose of this Chapter and for any communication on sanitary and phytosanitary related matters between the Parties, the definitions in Annex A of the SPS Agreement, as well as the glossary of harmonised terms of the relevant international organisations, shall apply.

2. The Parties shall work together in the effective implementation of the SPS Agreement and of the provisions set forth in this Article with the purpose of facilitating bilateral trade, without prejudice to the right to adopt measures necessary to protect human, animal or plant health and to achieve the appropriate level of sanitary or phytosanitary protection.

3. In accordance with the SPS Agreement, the Parties shall not use their sanitary and phytosanitary measures related to control, inspection, approval or certification to restrict market access without scientific justification, without prejudice to paragraph 7 of Article 5 of the SPS Agreement.

4. The Parties shall strengthen their co-operation in the field of sanitary and phytosanitary measures, with a view to increasing the mutual understanding of their respective systems and to improving their sanitary and phytosanitary systems.

5. Colombia and any of the EFTA States shall, whenever necessary, for facilitating access to their respective markets, develop bilateral agreements including those between their respective regulatory authorities.

6. The Parties agree to designate and notify upon the entry into force of this Agreement to each other, contact points for notification and information exchange on issues related to sanitary and phytosanitary systems matters.

7. The Parties hereby establish a forum for SPS experts. The forum shall meet when requested by one of the Parties. In order to permit the efficient use of resources, the Parties shall, to the extent possible, endeavour to use technological means of communication, such as electronic communication, video or telephone conference, or arrange for meetings to take place in conjunction with Joint Committee meetings or with relevant SPS meetings. The forum shall inter alia:

(a) overview and ensure the implementation of this Article;

(b) consider measures that any Party considers are likely to affect, or have affected, access to the markets of another Party with the aim of finding appropriate and timely solutions in conformity with the SPS Agreement;

(c) assess progress on market access interests of the Parties;

(d) discuss further developments of the SPS Agreement;

(e) consider the Parties obligations related to sanitary and phytosanitary matters in other international agreements; and

(f) establish technical expert groups, as needed.

ARTICLE 2.14

Technical Regulations

1. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment shall be governed by the WTO *Agreement on Technical Barriers to Trade* (hereinafter referred to as "the TBT Agreement"), which is hereby incorporated and made part of this Agreement, *mutatis mutandis*.

2. The Parties shall strengthen their co-operation in the field of technical regulations, standards and conformity assessment, with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they shall in particular co-operate in:

(a) reinforcing the role of international standards as a basis for technical regulations, including conformity assessment procedures;

(b) promoting the accreditation of conformity assessment bodies on the basis of relevant Standards and Guides of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC);

(c) promoting mutual acceptance of conformity assessment results of conformity assessment bodies, which have been recognised under appropriate multilateral agreements between their respective accreditation systems or bodies; and

(d) reinforcing the transparency in the development of technical regulations and conformity assessment procedures of the Parties to, among others, ensure that all adopted technical regulations are officially published on the Internet with free and public access. Where a Party detains at a port of entry goods originating in the territory of another Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.

3. The Parties shall exchange names and addresses of designated contact points for technical barriers to trade (TBT) related matters in order to facilitate technical consultations and the exchange of information on all matters that may arise from the application of specific technical regulations, standards and conformity assessment procedures.

4. If a Party requests any information or explanation pursuant to the provisions of this Article, the requested Party or Parties shall provide such information or explanation in print or electronically within a reasonable time. The requested Party or Parties shall endeavor to respond to such a request within 60 days.

5. If a Party considers that another Party has taken measures, not in conformity with the TBT Agreement, which are likely to affect or have affected access to its market, it may request, through the responsible contact point established pursuant to paragraph 3, technical consultations with a view to finding an appropriate solution in conformity with the TBT Agreement. Such consultations, which can take place both within and outside the framework of the Joint Committee, shall be held within 40 days from the request. Consultations may also be held via phone or video-conferences. Consultations within the Joint Committee shall constitute consultations under Article 12.5 (Consultations).

ARTICLE 2.15

Subsidies and Countervailing Measures

1. The rights and obligations relating to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, subject to paragraph 2.

2. Before a Party initiates an investigation to determine the existence, degree and effect of any alleged subsidy in Colombia or in an EFTA State, as provided for in Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures*, the Party considering initiating an investigation shall notify in writing the Party whose goods may

be subject to investigation and allow for a 30 days period with a view to finding a mutually acceptable solution. The consultations shall take place within 15 days from the receipt of the notification in the Joint Committee if any Party so requests.

3. Chapter 12 (Dispute Settlement) shall not apply to the present Article, except to its paragraph 2.

ARTICLE 2.16

Anti-Dumping

1. The rights and obligations relating to anti-dumping measures shall be governed by Article VI of the GATT 1994 and the WTO *Agreement on the Implementation of Article VI of the GATT 1994* (hereinafter referred to as the "WTO Anti-Dumping Agreement"), subject to paragraph 2.

2. When a Party receives a properly documented application and before initiating an investigation under the WTO Anti-Dumping Agreement, the Party shall notify in writing the other Party whose goods are allegedly being dumped and allow a 20 day period for consultations with a view to finding a mutually acceptable solution. If such a solution cannot be reached, each Party retains its rights and obligations under Article VI of GATT 1994 and the Agreement on Implementation of Article VI of the GATT and the WTO Anti-Dumping Agreement.

3. The Joint Committee shall review the present Article in order to determine whether its content is still necessary to achieve the policy objectives of the Parties.

4. The Chapter 12 (Dispute Settlement) shall not apply to the present article, except to its paragraph 2.

ARTICLE 2.17

Global Safeguard Measures

1. The Parties confirm their rights and obligations under Article XIX of the GATT 1994 and the WTO *Agreement on Safeguards* (hereinafter referred to as “the Safeguard Agreement”).

2. In taking measures under these WTO provisions, a Party shall exclude imports of an originating product from one or several Parties if such imports do not in and of themselves cause or threaten to cause serious injury. The Party taking the measure shall make such exclusion in accordance with WTO jurisprudence.

3. No Party may apply, with respect to the same good, at the same time:

(a) a bilateral safeguard measure; and

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

ARTICLE 2.18

Bilateral Safeguard Measures

1. During the transition period[1], where, as a result of the reduction or elimination of a customs duty under this Agreement, a product originating in the territory of 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 constitute a substantial cause[2] of serious injury or threat thereof to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take safeguard measures to the minimum extent necessary to remedy or prevent the injury, subject to the provisions of this Article.

2. Safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation in accordance with the procedures and definitions laid down in Articles 3 and 4 of the Safeguard Agreement.

3. The Party intending to take or extend a safeguard measure under this Article shall, immediately and in any case no later than 30 days before taking a measure, make notification to the other Parties and the Joint Committee. The notification shall contain all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved, and the proposed measure, as well as the date of completion of the investigation procedure referred to in paragraph 2, expected duration and timetable for the progressive removal of the measure.

4. A Party applying a bilateral safeguard measure shall, after consultations with the other Party, provide mutually agreed trade liberalisation compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party applying the measure shall provide an opportunity for such consultations no later than 15 days after the application of the bilateral safeguard measure.

5. If the conditions in paragraphs 1 and 2 are met, the importing Party may to the extent necessary to prevent or remedy serious injury or threat thereof:

(a) suspend the further reduction of any rate of duty provided for under this Agreement for the product; or

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[1] "Transition period" means ten years from the date of entry into force of this Agreement. For any product for which the Schedule to Annex VIII (Dismantling of Import Duties for Industrial Product) of the Party applying the measure provides for tariff elimination of more than ten years, transition period means the tariff elimination period for the products set out in that Schedule.

[2] "Substantial cause" means a cause which is more important than any other cause.

(b) increase the rate of customs duty for the product to a level not to exceed the lesser of:

(i) the Most-Favoured Nation (hereinafter referred to as "MFN") applied rate of duty in effect at the time the measure is imposed; or

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of the entry into force of this Agreement.

6. No Party may maintain a bilateral safeguard measure:

(a) except to the extent, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;

(b) for a period exceeding two years. The period may be extended by up to one year if the competent authority of the importing Party determines, in conformity with the procedures set out in paragraphs 2 and 3 above, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting; or

(c) beyond the expiration of the transition period.

7. No bilateral safeguard measure shall be applied to the import of a product, which has previously been subject to such a measure.

8. Within 30 days from the date of notification specified in paragraph 3, the Party conducting a safeguard proceeding under this Chapter, shall enter into consultations with a Party whose product is subject to that proceeding, in order to facilitate a mutually acceptable resolution of the matter and shall notify to Joint Committee the results of the consultations. In the absence of such resolution, the importing Party may adopt a measure pursuant to paragraph 5.

9. In the absence of such resolution, the importing Party may adopt a measure pursuant to paragraph 5 to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the measure is taken may take compensatory action. The safeguard measure and the compensatory action shall be immediately notified to the other Parties and the Joint Committee. In the selection of the safeguard measure and the compensatory action, priority must be given to the action which least disturbs the functioning of this Agreement. The compensatory action shall normally consist of suspension of concessions having substantially equivalent trade effects or concessions substantially equivalent to the value of the additional duties expected to result from the safeguard measure. The Party taking compensatory action shall apply the action only for the minimum period necessary to achieve the substantially equivalent trade effects and in any event, only while the measure under paragraph 5 is being applied.

10. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is one year or more, the Party applying the measure shall progressively liberalise it at regular intervals during the period of application.

11. Upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

12. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The Party intending to take such a measure shall immediately notify all the Parties and the Joint Committee**.** During the time of the application of the provisional safeguard measure, the pertinent requirements and procedures set out in paragraphs 2 to 9 shall be met.

13. Any provisional safeguard measures shall be terminated within 180 days at the latest. The following modalities shall apply:

(a) the period of application of any provisional measure shall be counted as part of the duration of the measure set out in paragraph 6 and any extension thereof.

(b) such measures may only be imposed as a tariff increase pursuant to paragraph 5. Any additional duty actually paid shall be promptly refunded, and any guarantee shall be liberated, if the investigation described in paragraph 2 does not result in a finding that the conditions of paragraph 1 are met.

(c) any mutually agreed compensation, or compensatory action, shall be based on the total period of application of the provisional safeguard measure and of the safeguard measure**.**

ARTICLE 2.19

General Exceptions

For the purpose of this Chapter, the rights and obligations of the Parties in respect of general exceptions shall be governed by Article XX of the GATT 1994, which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.20

National Security

For the purpose of this Chapter, the rights and obligations of the Parties in respect of security exceptions shall be governed by Article XXI of the GATT 1994, which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.21

Balance-of-Payments

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance of payments purposes.

2. A Party in serious balance of payments difficulties, or under imminent threat thereof, may, in accordance with the conditions established under the GATT 1994 and the WTO *Understanding on the Balance of Payments Provisions of the GATT 1994*, adopt trade restrictive measures, which shall be of limited duration and non-discriminatory, and may not go beyond what is necessary to remedy the balance of payments situation.

3. The Party introducing a measure under this Article shall promptly notify the other Parties thereof.

CHAPTER 3

PROCESSED AGRICULTURAL PRODUCTS

ARTICLE 3.1

Scope

1. Processed agricultural products shall be governed by Chapter 2 (Trade in Goods), unless otherwise provided for in this Chapter.

2. The Parties confirm their rights and obligations under the WTO *Agreement on Agriculture*, unless otherwise specified in this Agreement.

ARTICLE 3.2

Price Compensation Measures

1. In order to take account of differences in the cost of the agricultural raw materials incorporated into the products referred to in Article 3.3 (Tariff Concessions), this Agreement does not preclude the levying, upon import, of a duty.

2. The duty, levied upon import, shall be based on, but not exceed, the differences between the domestic price and the world market price of the agricultural raw materials incorporated into the products concerned.

ARTICLE 3.3

Tariff Concessions

1. Taking into account the provisions laid down in Article 3.2 (Price Compensation Measures) the EFTA States shall accord for products listed in the Table 1 of Annex III (Processed Agricultural Products), originating in Colombia, treatment no less favourable than that accorded to the European Community on 1 January, 2008

2. For products listed in Table 2 of Annex III (Processed Agricultural Products), and originating in an EFTA State, Colombia shall reduce its customs duties as specified therein.

ARTICLE 3.4

Agricultural Export Subsidies

1. The Parties shall not adopt, maintain, introduce or re-introduce export subsidies, as defined in the WTO *Agreement on Agriculture*, in their trade on products subject to tariff concessions in accordance with this Agreement.

2. Should a Party adopt, maintain, introduce or re-introduce export subsidies, as defined in paragraph 1, on a product subject to a tariff concession in accordance with Article 3.3 (Tariff Concessions), the other Parties may increase the rate of duty on such imports up to the applied MFN tariff in effect at that time. If a Party increases the rate of duty, it shall notify the other Parties within 30 days.

ARTICLE 3.5

Price Band System

Colombia may maintain its Price Stabilization Mechanism for agricultural products as set out in Table 3 to Annex III (Processed Agricultural Products).

ARTICLE 3.6

Notification

The EFTA States shall notify Colombia at an early stage, at the latest before the entry into force of this Agreement, of all measures applied under Article 3.2 (Price Compensation Measures). The EFTA States shall inform Colombia of all changes in the treatment accorded to the European Community.

ARTICLE 3.7

Consultation

The Parties shall review periodically the development of their trade in products covered by this Chapter. In the light of these reviews and taking into account the arrangements between the Parties and the European Community or in the WTO, the Parties shall decide on possible changes to this Chapter.

CHAPTER 4

TRADE IN SERVICES

ARTICLE 4.1

Scope and Coverage

1. This Chapter applies to measures adopted or maintained by Parties affecting trade in services. It applies to all services sectors.

2. For the purpose of this Chapter, "measures by Parties" 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.

3. In respect of air transport services, this Chapter shall not apply to measures affecting air traffic rights as well as measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the GATS Annex on Air Transport Services. The definitions contained in paragraph 6 of the GATS Annex on Air Transport Services shall apply for the purpose of this Chapter.

4. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement, which is subject to Chapter 7 (Government Procurement).

ARTICLE 4.2

Definitions

For the purpose of this Chapter:

(a) "trade in services" is defined as the supply of a service:

(i) from the territory of one Party into the territory of any other Party;

(ii) in the territory of one Party to the service consumer of any other Party;

(iii) by a service supplier of one Party, through commercial presence in the territory of any other Party;

(iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party;

(b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;

(c) "a service 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;

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

(e) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

(f) "measures by a Party affecting trade in services" includes measures in respect of:

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

(ii) the access to and use of, in connection with the supply of a service, services which are required by that Party to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;

(g) "commercial presence" means any type of business or professional establishment, including through:

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

(ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;

(h) "sector" of a service means:

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule,

(ii) otherwise, the whole of that service sector, including all of its subsectors;

(i) "service of a Party" means a service which is supplied:

(i) from or in the territory of a Party, or in the case of maritime transport, by a vessel registered under the laws of a Party, or by a person of a Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of a Party;

(j) "service supplier" means any person that supplies, or seeks to supply, a service;[3]

(k) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

(l) "service consumer" means any person that receives or uses a service;

(m) "person" means either a natural person or a juridical person;

(n) "natural person of another Party" means a natural person who, under the legislation of that other Party, is:

(i) a national of that other Party who resides in the territory of any WTO Member; or

(ii) a permanent resident of that other Party who resides in the territory of any Party, if that other Party accords substantially the same treatment to its permanent residents as to its nationals in respect of measures affecting trade in services. For the purpose of the supply of a service through presence of natural persons (Mode 4), this definition covers a permanent resident of that other Party who resides in the territory of any Party or in the territory of any WTO Member;

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[3] Where the service is not supplied or sought to be supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (*i.e.* the juridical person) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the territory where the service is supplied or sought to be supplied.

(o) "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;

(p) "juridical person of another Party" means a juridical person which is either:

(i) constituted or otherwise organised under the laws of that other Party, and is engaged in substantive business operations in the territory of:

(A) any Party; or

(B) any Member of the WTO and is owned or controlled by natural persons of that other Party or by juridical persons that meet all the conditions of subparagraph (i)(A);

or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(A) natural persons of that other Party; or

(B) juridical persons of that other Party identified under subparagraph (p)(i);

(q) a juridical person is:

(i) "owned" by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

(ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

(r) "direct taxes" comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

ARTICLE 4.3

Most-Favoured-Nation Treatment

1. Except as provided for in its List of MFN Exemptions contained in Annex XI (Lists of MFN Exemptions), a Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of another Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-party.

2. Treatment granted under other agreements concluded by one of the Parties and notified under Article V or Article V *bis* of the GATS, as well as treatment granted in accordance with Article VII of the GATS, shall not be subject to paragraph 1.

3. If a Party enters into an agreement notified under Article V or Article V *bis* of the GATS, it shall upon request from another Party afford adequate opportunity to that Party to negotiate the benefits granted therein.

4. The provision of this Chapter shall not be so construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

ARTICLE 4.4

Market Access

1. With respect to market access through the modes of supply identified in subparagraph (a) of Article 4.2 (Definitions), each Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.[4]

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 its Schedule, are defined as:

[4] To the extent that a market-access commitment is undertaken by a Party in its Schedule of Commitments, and where the cross-border movement of capital is an essential part of a service supplied through the mode of supply referred to in subparagraph (a)(i) of Article 4.2 (Definitions), that Party is hereby committed to allow such movement of capital. To the extent that a market-access commitment is undertaken by a Party in its Schedule of Commitments, and where a service is supplied through the mode of supply referred to in subparagraph (a)(iii) of Article 4.2 (Definitions), that Party is hereby committed to allow related transfers of capital into its territory.

(a) limitations on the number of service 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;

(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;[5]

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

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

ARTICLE 4.5

National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[6]

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.

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5 Subparagraph 2(c) of Article 4.2 (Definitions) does not cover measures of a Party which limit inputs for the supply of services.

6 Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

ARTICLE 4.6

Additional Commitments

Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 4.4 (Market Access) or 4.5 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

ARTICLE 4.7

Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of another Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Where authorisation is required by a Party for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application is considered complete under that Party's domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.

4. In sectors where specific commitments are undertaken, each Party shall ensure that measures relating to qualification requirements and procedures, technical standards, and licensing requirements:

(i) are based on objective and transparent criteria, such as competence and the ability to supply the service;

(ii) are not more burdensome than necessary to ensure the quality of the service; and

(iii) in the case of licensing procedures, are not in themselves a restriction on the supply of the service.

5. In determining whether a Party is in conformity with the obligation under paragraph 4, account shall be taken of international standards of relevant international organisations[7] applied by that Party.

6. Each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

ARTICLE 4.8

Recognition

1. For the purpose of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party shall give due consideration to any requests by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted in the territory of a non-party, that Party shall afford another Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted in the territory of that other Party should also be recognised.

3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.

ARTICLE 4.9

Movement of Natural Persons

1. This Article applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.

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

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[7] The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of all Parties.

3. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party 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.[8]

ARTICLE 4.10

Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Nothing in this Chapter 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 4.11

Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 4.3 (Most-Favoured-Nation Treatment) and specific commitments.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

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[8] The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its territory.

ARTICLE 4.12

Business Practices

1. Parties recognise that certain business practices of service suppliers, other than those falling under Article 4.11 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of any other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall co-operate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

ARTICLE 4.13

Payments and Transfers

1. Except under the circumstances envisaged in Article 4.14 (Restrictions to Safeguard the Balance-of-Payments) and Annex XIV (Payments and Capital Movement) a Party shall not apply restrictions on international transfers and payments for current transactions with another Party.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the International Monetary Fund (hereinafter referred to as "IMF"), including the use of exchange actions which are in conformity with the Articles of the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 4.14 (Restrictions to Safeguard the Balance of Payments) or at the request of the IMF.

ARTICLE 4.14

Restrictions to Safeguard the Balance-of-Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.

2. The rights and obligations of the Parties in respect of such restrictions shall be governed by paragraphs 1 to 3 of Article XII of the GATS, which are hereby incorporated into and made part of this Chapter.

3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee thereof.

ARTICLE 4.15

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter 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;[9]

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services 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;

(d) inconsistent with Article 4.5 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective

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

imposition or collection of direct taxes in respect of services or service suppliers of other Parties;[10]

(e) inconsistent with Article 4.3 (Most-Favoured-Nation Treatment), provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

ARTICLE 4.16

Security Exceptions

1. Nothing in this Chapter shall be construed:

(a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

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[10] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or

(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or

(iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or

(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in subparagraph (d) of Article 4.15 (General Exceptions) and in this footnote 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.

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Joint Committee shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

ARTICLE 4.17

Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 4.4 (Market Access), 4.5 (National Treatment), and 4.6 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments referred to in Article 4.6 (Additional Commitments); and

(d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 4.4 (Market Access) and 4.5 (National Treatment) are inscribed in the column relating to Article 4.4 (Market Access). In this case, the inscription is considered to provide a condition or qualification to Article 4.5 (National Treatment) as well.

ARTICLE 4.18

Review

1. With the objective of further liberalising trade in services between them, the Parties shall review their schedules of specific commitments and their Lists of MFN Exemptions at least every three years to provide for a reduction or elimination of substantially all remaining discrimination between the Parties with regard to trade in services covered in this Chapter on a mutually advantageous basis and ensuring an overall balance of rights and obligations. The first such review shall take place not later than two years after the entry into force of this Agreement.

2. The Parties shall jointly review the negotiations provided for in paragraph 4 of Article VI and paragraph 1 of Article XV of the GATS and incorporate any results of such negotiations, as appropriate, into this Chapter.

ARTICLE 4.19

Annexes

The following Annexes attached to this Agreement form an integral part of this Chapter:

(a) Annex XI (Lists of MFN Exemptions);

(b) Annex XII (Recognition of Qualifications of Service Suppliers);

(c) Annex XIII (Movement of Natural Persons Supplying Services);

(d) Annex XIV (Payments and Capital Movement)

(e) Annex XV (Schedules of Specific Commitments);

(f) Annex XVI (Financial Services); and

(g) Annex XVII (Telecommunications Services).

CHAPTER 5

INVESTMENT

ARTICLE 5.1

Coverage

This Chapter shall apply to commercial presence in all sectors, with the exception of services sectors as set out in Article 4.1 (Scope and Coverage) in Chapter 4 (Trade in Services) of this Agreement.

ARTICLE 5.2

Definitions

1. For the purpose of this Chapter,

   (a) "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;

   (b) "juridical person of a Party" means a juridical person constituted or otherwise organised under the law of Colombia or of an EFTA State and engaged in substantive business operations in Colombia or in the EFTA State concerned;

   (c) "natural person" means a national of Colombia or of an EFTA State according to its respective legislation;

   (d) "national" means a natural person who has the nationality of a Party or is a permanent resident of a Party in accordance with its domestic law;

   (e) "commercial presence" means any type of business establishment, including through:

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

(ii) the creation or maintenance of a branch or a representative office,

within the territory of another Party for the purpose of performing an economic activity.

2. As regards natural persons, this Chapter shall not extend to seeking or taking employment in the labor market or confer a right of access to the labor market of another Party.

ARTICLE 5.3

National Treatment

With respect to commercial presence, and subject to the reservations/non-conforming measures set out in Annex XVIII (Reservations/Non-conforming Measures) to this, each Party shall grant to juridical and natural persons of another Party, and to the commercial presence of such persons, treatment no less favorable than that it accords, in like situations to its own juridical and natural persons.

ARTICLE 5.4

Reservations/Non-conforming Measures

1. National Treatment as provided for under Article 5.3 (National Treatment) shall not apply to:

(a) any reservation/non-conforming measure that is listed by a Party in Annex XVIII (Reservations/Non-conforming Measures);

(b) an amendment to a reservation/non-conforming measure covered by paragraph (a) to the extent that the amendment does not increase the non-conformity of the reservation with Article 5.3 (National Treatment);

(c) any new reservation/non-conforming measure adopted by a Party in accordance with paragraph 4 of this Article and incorporated into Annex XVIII (Reservations/Non-conforming Measures);

(d) any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in Annex XVIII (Reservations/Non-conforming Measures) ;

to the extent that such reservation/non-conforming measure is inconsistent with Article 5.3 (National Treatment).

2. As part of the review provided for in Article 5.9 (Review) of this Chapter the Parties undertake to review at least every three years the status of the reservations/non-conforming measure set out in Annex XVIII (Reservations/Non-conforming Measures) with a view to reducing or removing such reservations/non-conforming measures.

3. A Party may, at any time, either upon the request of another Party or unilaterally, remove in whole or in part reservations/non-conforming measure set out in Annex XVIII (Reservations/Non-conforming Measures) by written notification to the other Parties.

4. In case of the adoption of a new reservation, based on a law adopted by the legislature, as referred to in subparagraph 1(c), the Party concerned shall ensure that the overall level of its commitments under this Agreement is not affected. It shall promptly notify the other Parties of the reservation and set out, where applicable, the measures aimed at maintaining the overall level of its commitments. On receiving such notification, any other Party may request consultations regarding the reservation and related issues. Such consultations shall be entered into without delay.

ARTICLE 5.5

Key Personnel

1. Each Party shall, subject to its laws and regulations, grant natural persons of another Party, and key personnel, which is employed by natural or juridical persons of another Party, temporary entry and stay in its territory in order to engage in activities connected with commercial presence, including the provision of advice or key technical services.

2. Each Party shall, subject to its laws and regulations, permit natural or juridical persons of another Party, and their commercial presence, to employ, in connection with commercial presence, any key personnel of the natural or juridical person's choice provided that such key personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.

3. The Parties shall, subject to their laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to the spouse and minor children of key personnel who has been granted temporary entry, stay and authorisation to work in accordance with paragraphs 1 and 2. The spouse and minor children shall be admitted for the period of the stay of that person.

4. Subject to paragraphs 1 to 3 of this Article, Annex XIII (Movement of Natural Persons Supplying Services) shall apply to this Article *mutatis mutandis.*

ARTICLE 5.6

Right to Regulate

Subject to the provisions of this Chapter and Annexes XIV (Payments and Capital Movements) and XVIII (Reservations/Non-conforming Measures), a Party is not prevented from regulating the commercial presence as set out in subparagraph 1(d) of Article 5.2 (Definitions).

ARTICLE 5.7

Relation to other International Agreements

The provisions of this Chapter shall be without prejudice to the rights and obligations of the Parties under other international agreements, to which Colombia and one or several EFTA States are parties. It is understood that any dispute settlement mechanism in an investment protection agreement to which Colombia and one EFTA State are parties is not applicable to alleged breaches of this Chapter.

ARTICLE 5.8

Exceptions

The rights and obligations of the Parties in respect of general exceptions, including measures necessary to maintain public order[11], shall be governed by Article XIV of the GATS, which is hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

ARTICLE 5.9

Review

This Chapter shall be subject to periodic review within the framework of the Joint Committee regarding the possibility to further develop the Parties' commitments.

[11] Colombia reserves the right to adopt measures for reasons of public order pursuant to Article 100 of the Constitución Política de Colombia (1991), provided that Colombia promptly provides written notice to the Joint Committee that it has adopted a measure and that the measure is applied in accordance with the procedural requirements set out in the Constitución Política de Colombia (1991), such as the requirements set out in Articles 213, 214 and 215 of the Constitución Política de Colombia (1991).

ARTICLE 5.10

Payments and Transfers

1. Except under the circumstances envisaged in Article 5.11 (Restrictions to Safeguard the Balance-of-Payments) and Annex XIV (Payments and Capital Movements), a Party shall not apply restrictions on current payments and capital movements relating to activities with regard to "commercial presence" in non-services sectors.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the IMF, including the use of exchange actions which are in conformity with the said Articles, provided that a Party does not impose restrictions on capital transactions inconsistent with its obligations under this Chapter.

ARTICLE 5.11

Restrictions to Safeguard the Balance-of-Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.

2. The rights and obligations of the Parties in respect of such restrictions shall be governed by paragraphs 1 to 3 of Article XII of the GATS, which are hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee.

CHAPTER 6

PROTECTION OF INTELLECTUAL PROPERTY

ARTICLE 6.1

General Provisions

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements referred to therein.

2. Each Party shall give effect to the provisions of this Chapter and may, but shall not be obliged to, implement in the national legislation more extensive protection than is required by this Chapter, provided that such protection does not contravene the provisions of this Chapter.

3. The Parties shall accord to the nationals of other Party treatment no less favourable than that it accords to its own nationals with regard to the protection[12] of intellectual property, subject to the exceptions already provided in Articles 3 and 5 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (hereinafter referred to as "the TRIPS Agreement").

4. 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 already provided in Articles 4 and 5 of the of the TRIPS Agreement.

5. In accordance with paragraph 2 of Article 8 of the TRIPS Agreement, Parties may take appropriate measures, provided that they are consistent with the provisions of this Agreement, if needed 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.

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[12] For the purposes of paragraphs 3 and 4 "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 Chapter.

ARTICLE 6.2

Basic Principles

1. In accordance with Article 7 of the TRIPS Agreement, the Parties recognise that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

2. The Parties recognise that technology transfer contributes to strengthen national capabilities with the aim to establish a sound and viable technological base.

3. The Parties recognise the impact of information and communication technologies on the creation and usage of literary and artistic works.

4. In accordance with paragraph 1 Article 8 of the TRIPS Agreement, the Parties may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

5. The Parties recognise the principles established in the *Declaration on the TRIPS Agreement and Public Health*, adopted on 14 November 2001 by the WTO at its Fourth Ministerial Meeting, held in Doha, Qatar, and the *Decision of WTO's General Council on the Implementation of Paragraph 6 of the Doha Declaration*, adopted on 30 August 2003 and the *Amendment of the TRIPS Agreement* adopted on 6 December 2005.

ARTICLE 6.3

Definition of Intellectual Property

For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Articles 6.6 (Trademarks) to 6.11 (Undisclosed Information / Measures Related to Certain Regulated Products).

ARTICLE 6.4

International Conventions

1. Without prejudice of the rights and obligations contained in this Chapter, the Parties reaffirm their existing rights and obligations, including the right to apply the exceptions and to make use of the flexibilities, under the 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 they are party, in particular the following:

(a) *Paris Convention of 20 March 1883 for the Protection of Industrial Property* (Stockholm Act, 1967) hereinafter referred to as the "Paris Convention";

(b) *Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works* (Paris Act, 1971); and

(c) *International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (Rome Convention).

2. The Parties to this Agreement which are not parties to one or more of the agreements listed below shall ratify or accede to the following multilateral agreements at the entry into force of this Agreement:

(a) *Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*;

(b) *International Convention for the Protection of New Varieties of Plants 1978* (1978 UPOV Convention), or the *International Convention for the Protection of New Varieties of Plants 1991* (1991 UPOV Convention); and

(c) *Patent Cooperation Treaty of 19 June 1970* (Washington Act, amended in 1979 and modified in 1984).

3. The Parties to this Agreement which are not parties to one or more of the agreements listed below shall ratify or accede to the following multilateral agreements within one year from the date of entry into force of this Agreement:

(a) *WIPO Performances and Phonograms Treaty* of 20 December 1996 (WPPT); and

(b) *WIPO Copyright Treaty* of 20 December 1996 (WCT).

4. The Parties which are not parties to the *Protocol of 27 June 1989 Relating to the Madrid Agreement concerning the International Registration of Marks* shall ratify or accede to this agreement before 1 January 2011.

5. The Parties will carry out the necessary actions to submit as soon as possible for the consideration of the Parties' competent national authorities the adherence to the *Geneva Act (1999) of the Hague Agreement concerning the International Registration of Industrial Designs*.

6. The Parties to this Agreement may agree, upon mutual consent, to have an exchange of views of experts on activities relating to existing or future international conventions on Intellectual Property Rights and on any other matter related to Intellectual Property Rights as the Parties may agree upon.

ARTICLE 6.5

Measures Related to Biodiversity

1. The Parties reaffirm their sovereign rights over their natural resources and recognise their rights and obligations as established by the *Convention on Biological Diversity* with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilisation of these genetic resources.

2. The Parties recognise the importance and the value of their biological diversity and of the associated traditional knowledge, innovations and practices of indigenous and local communities. Each Party shall determine the access conditions to its genetic resources in accordance with the principles and provisions contained in applicable national and international law.

3. The Parties recognise past, present and future contributions of indigenous and local communities and their knowledge, innovations and practices to the conservation and sustainable use of biological and genetic resources and in general the contribution of the traditional knowledge of their indigenous and local communities to the culture and economic and social development of nations.

4. The Parties shall consider collaborating in cases regarding non compliance with applicable legal provisions on access to genetic resources and traditional knowledge, innovations and practices.

5. According to their national law, the Parties shall require that patent applications contain a declaration of the origin or source of a genetic resource, to which the inventor or the patent applicant has had access. As far as provided for in their national legislation, the Parties will also require the fulfilment of prior informed consent (PIC) and they will apply the provisions set out in this Article to traditional knowledge as applicable.

6. The Parties, in accordance with their national laws, shall provide for administrative, civil or criminal sanctions if the inventor or the patent applicant wilfully make a wrongful or misleading declaration of the origin or source. The judge may order the publication of the ruling.

7. If the law of a Party so provides:

(a) access to genetic resources shall be subject to the prior informed consent of the Party that is the Party providing the genetic resources; and

(b) access to traditional knowledge of indigenous and local communities associated to these resources shall be subject to the approval and involvement of these communities.

8. Each Party shall take policy, legal and administrative measures, with the aim of facilitating the fulfillment of terms and conditions for access established by the Parties for such genetic resources.

9. The Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring the fair and equitable sharing of the benefits arising from the use of genetic resources or associated traditional knowledge. Such sharing shall be based on mutually agreed terms.

ARTICLE 6.6

Trademarks

1. The Parties shall grant adequate and effective protection to trademark right holders of goods and services. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including combinations of words, personal names, letters, numerals, figurative elements, sounds and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, the Parties may make registrability depend on distinctiveness acquired through use. Parties may require, as a condition of registration, that signs be visually perceptible.

2. Parties shall use the International Classification of Goods and Services for the Purposes of the Registration of Trademarks established by the *Nice Agreement of 15 June 1957* and its effective amendments to classify the goods and services to which the trademarks shall be applied.

3. The classes of goods and services of the International Classification referred to in paragraph 2 shall not be used to determine whether the goods or services listed for a specific trademark are similar or different to those of another trademark.

4. The Parties recognise the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (1999), and the *Joint Recommendation Concerning Provisions on the Protection of Marks, and other Industrial Property Rights in Signs, on the Internet* (2001), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO, and shall be guided by the principles contained in these Recommendations.

ARTICLE 6.7

Geographical Indications, Including Appelations of Origin and Indications of Source

1. The Parties to this Agreement shall ensure in their national laws adequate and effective means to protect geographical indications, including appellations of origin[13], and indications of source.

2. For the purposes of this Agreement

(a) "geographical indications" are indications which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin; and

(b) "indications of source", whether names, expressions, images, flags or signs constitute direct or indirect references to a particular country, region, locality or place as the geographical origin of goods or services. Nothing in this Agreement shall require a Party to amend its legislation if, at the date of entry into force of this Agreement, its national law limits the protection of indications of source to cases where a given quality, reputation or other characteristic of the good or the service is essentially attributable to its geographical origin.

3. An indication of source may not be used in the course of trade for a good or service where that indication is false or misleading or where its use is likely to cause confusion to the public as to the geographical origin, of the good or service in question, or which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

4. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall provide the legal means to interested parties to prevent the use of a geographical indication for identical or comparable goods not originating in the place indicated by the designation in question in a manner which misleads or confuses the public as to the geographical origin of the good, or which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

[13] If any Party has provided for the protection of appellations of origin in its national legislation, nothing in this Agreement shall require to amend it.

ARTICLE 6.8

Copyright and Related Rights

1. The Parties shall grant and assure to the authors of literary and artistic works and to performers, producers of phonograms and broadcasting organisations, an adequate and effective protection of their works, performances, phonograms and broadcasts, respectively.

2. Independently of the author's economic rights, and even after the transfer of the said 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, the said work, which would be prejudicial to his honour or reputation.

3. The rights granted to the author in accordance with paragraph 2 shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed.

4. Rights under paragraphs 2 and 3 shall be granted, *mutatis mutandis*, to performers as regards their live performances or fixed performances.

ARTICLE 6.9

Patents

1. Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 3, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Each Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.

3. Each Party may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, the Parties shall

provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. Notwithstanding the foregoing, a Party that does not provide for patent protection for plants, shall undertake reasonable efforts to make such patent protection available consistent with paragraph 1.

4. Each Party shall make best efforts to process patent applications and marketing approval applications expeditiously with a view to avoiding unreasonable delays. The Parties shall co-operate and provide assistance to one another to achieve this objective.

5. With respect to any pharmaceutical product that is covered by a patent, each Party may make available a restoration/compensation of the patent term or patent rights to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the marketing approval process related to the first commercial marketing of the product in the territory of that Party. Any restoration under this paragraph shall confer all exclusive rights of a patent subject to the same limitations and exceptions applicable to the original patent.

ARTICLE 6.10

Designs

The Parties shall ensure in their national laws adequate and effective protection of industrial designs by providing in particular, an adequate term of protection in accordance with internationally prevailing standards. The Parties shall seek to harmonise their respective term of protection.

ARTICLE 6.11

Undisclosed Information/Measures Related to Certain Regulated Products

1. The Parties shall protect undisclosed information as set out by and in accordance with Article 39 of the TRIPS Agreement.

2. Where a Party requires as a condition for marketing approval of pharmaceutical products or agricultural chemical products which utilise new chemical entities[14], the submission of undisclosed test data related to safety and efficacy, the origination of which involves a considerable effort, the Party shall not allow the marketing of a product which contains the same new chemical entity, based on the information provided by the first applicant without his consent, for a reasonable period, which, in

[14] For the purposes of this paragraph, a "new chemical entity" means an active principle that has not been previously approved in the territory of the Party for an agricultural chemical or pharmaceutical product. The Parties need not apply this provision with respect to a pharmaceutical product that contains a chemical entity that has been previously approved in the territory of the Party for a pharmaceutical product.

the case of pharmaceutical products means normally[15] five years and, in the case of agricultural chemicals products, ten years from the date of the marketing approval in the territory of the Party. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence or bioavailability studies.

3. Reliance on or reference to data referred to in paragraph 2 may be permitted,

(a) where approval is sought for reimported products that have already been approved before exportation, and

(b) in order to avoid unnecessary duplication of tests of agricultural chemicals products involving vertebrate animals where the first applicant is adequately compensated.

4. A Party may take measures to protect public health in accordance with:

(a) implementation of the *Declaration of the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2) (hereinafter referred to in this Article as the "Declaration");

(b) any waiver of any provision of the TRIPS Agreement adopted by WTO members in order to implement the Declaration; and

(c) any amendment to the TRIPS Agreement to implement the Declaration.

5. Where a Party relies on a marketing approval granted by another Party, and grants approval within six months of the filing of a complete application for marketing approval filed in the Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin on the date of the first marketing approval.

ARTICLE 6.12

Acquisition and Maintenance of Intellectual Property Rights

Where the acquisition of an intellectual property right is subject to the right being granted or registered, the Parties shall ensure that the procedures for grant or registration are of the same level as that provided under the TRIPS Agreement, in particular Article 62.

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15 "Normally" means that the protection shall extend to five years, unless there is an exceptional case, where the public health interests would need to take precedence over the rights provided for in this paragraph.

ARTICLE 6.13

Enforcement of Intellectual Property Rights

The Parties shall establish provisions for enforcement of intellectual property rights in their national laws that are of the same level as that provided under the TRIPS Agreement, in particular Articles 41 to 61.

ARTICLE 6.14

Right of Information in Civil and Administrative Procedures

The Parties may provide that, in civil and administrative procedures, the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.[16]

ARTICLE 6.15

Suspension of Release by Competent Authorities

1. The Parties shall adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of goods infringing copyright or trademark may take place, to lodge in writing an application with the competent authorities, administrative or judicial, for the suspension of the release into free circulation of such goods by the customs authorities. The Parties shall consider the application of such measures to other intellectual property rights.

2. It is understood that there shall be no obligation to apply procedures set forth in paragraph 1 to the suspension of the release into free circulation of goods put on the market in another country by or with the consent of the right holder.

ARTICLE 6.16

Right of Inspection

1. The competent authorities shall give the applicant for the suspension of goods and other persons involved in the suspension the opportunity to inspect goods whose release has been suspended or which have been detained.

2. When examining goods, the competent authorities may take samples and, according to the rules in force in the Party concerned, at the express request of the right

[16] For greater certainty, this provision does not apply when it conflicts with constitutional or statutory guarantees.

holder, hand over or send such samples to the right holder, strictly for the purposes of analysis and to facilitate the subsequent procedure. Where circumstances allow, samples must be returned on completion of the technical analysis and, where applicable, before goods are released or their detention is lifted. Any analysis of these samples shall be carried out under the sole responsibility of the right holder.

ARTICLE 6.17

Liability Declaration, Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse, or in the cases provided in their domestic legislation to declare to accept liability for damages resulting from the suspension of release.

2. The security or equivalent assurance under paragraph 1 shall not unreasonably deter recourse to these procedures.

ARTICLE 6.18

Promotion of Research, Technological Development and Innovation

1. The Parties acknowledge the importance of promoting research, technological development and innovation, of disseminating technological information, and of building and strengthening their technological capacities, and they will seek to co-operate in such areas, taking into account their resources.

2. Between Colombia and the Swiss Confederation co-operation in the fields mentioned in paragraph 1, may be based, in particular, on the respective Letters of Intent between the State Secretariat for Education and Research of the Federal Department of Home Affairs of the Swiss Confederation and the *Instituto Colombiano para el Desarollo de la Ciencia y la Tecnología "Francisco José de Caldas" (COLCIENCIAS)* of 26 April 2005.

3. Accordingly, Colombia and the Swiss Confederation may seek and encourage opportunities for co-operation according to this Article and, as appropriate, engage in collaborative scientific research projects. The offices mentioned in paragraph 2 shall act as contact points to facilitate the development of collaborative projects and periodically review the status of such collaboration through mutually agreed means.

4. Colombia on one side and the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway on the other side will seek opportunities for co-operation according to this Article. Such co-operation shall be based on mutually agreed terms and will be formalised through appropriate means.

5. Any proposal or inquiry regarding scientific collaboration between the Parties shall be directed to the Parties through the following entities:

- Colombia: *Instituto Colombiano para el Desarrollo de la Ciencia y la Tecnología "Francisco José de Caldas" (COLCIENCIAS)*;

- the Republic of Iceland: Icelandic Center for Research (RANNÍS), Ministry of Education, Science and Culture;

- the Kingdom of Norway: The Research Council of Norway (Forskningsraadet); and

- the Swiss Confederation: State Secretariat for Education and Research of the Federal Department of Home Affairs.

CHAPTER 7

GOVERNMENT PROCUREMENT

ARTICLE 7.1

Scope and Coverage

Application of Chapter

1. This Chapter applies to any measure of a Party regarding covered procurement.

2. For the purpose of this Chapter, "covered procurement" means a procurement for governmental purposes of goods, services, or any combination thereof:

(a) by any contractual means, including purchase, lease, rental or hire purchase, with or without an option to buy**;**

(b) for which the value, as estimated in accordance with paragraphs 4 and 5 as appropriate, equals or exceeds the relevant threshold specified in Appendices 1 through 3 to Annex XIX (Covered Entities);

(c) that is conducted by a procuring entity; and

(d) subject to the conditions specified in Annexes XIX (Covered Entities) and XX (General Notes).

3. This Chapter does not apply to:

(a) non-contractual agreements or any form of assistance that a Party, including a government enterprise, provides, including co-operative agreements, grants, loans, subsidies, equity infusions, guarantees, and fiscal incentives;

(b) 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[17], including loans and government bonds, notes and other securities;

[17] For greater certainty, this Chapter 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.

(c) procurement funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter;

(d) contracts awarded pursuant to:

(i) an international agreement and intended for the joint implementation or exploitation of a project by the contracting parties;

(ii) an international agreement relating to the stationing of troops;

(e) public employment contracts and related employment measures; and

(f) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon

Valuation

4. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of a procurement for the purpose of avoiding the application of this Chapter;

(b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for under the contract and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases; and

(c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation on the total maximum value of the procurement over its entire duration.

5. Where the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be covered by this Chapter.

6. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures or contractual means, provided that they are consistent with this Chapter.

ARTICLE 7.2

Definitions

For purposes of this Chapter:

(a) "conditions for participation" means any registration, qualification or other pre-requisites for participation in a procurement;

(b) "construction service" means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

(c) "days" means calendar days;

(d) "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;

(e) "in writing" or "written" means any worded, numbered expression, or other symbols that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;

(f) "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(g) "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

(h) "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;

(i) "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;

(j) "offsets" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar actions or requirements;

(k) "open tendering" means a procurement method where all interested suppliers may submit a tender;

(l) “procurement” means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or with a view to use in the production or supply of goods or services for commercial sale or resale;

(m) “procuring entity” means an entity covered under Appendices 1 through 3 to Annex XIX (Covered Entities);

(n) “public works concessions” means a contract of the same type as construction services contracts, except for the fact that the remuneration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with a payment;

(o) “qualified supplier” means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(p) “selective tendering” means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(q) “services” includes construction services, unless otherwise specified;

(r) “standard” means a document approved by a recognised body, that provides, for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, service, process, or production method;

(s) “supplier” means a person or group of persons that provides or could provide goods or services to a procuring entity; and

(t) “technical specification” means a tendering requirement that:

(i) lays down 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

(ii) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

ARTICLE 7.3

Exceptions to the Chapter

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition, or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Subject to the requirement 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 to trade between the Parties, nothing in this Chapter 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;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

3. The Parties understand that subparagraph 2 (b) includes environmental measures necessary to protect human, animal or plant life or health.

ARTICLE 7.4

General Principles

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party including its procuring entities shall accord immediately and unconditionally to the goods and services of another Party and to the suppliers of another Party offering such goods or services, treatment no less favourable than the treatment accorded to domestic 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.

Use of Electronic Means

3. 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 establishment of the time of receipt and the prevention of inappropriate access.

Conduct of Procurement

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering, and limited tendering as specified in Article 7.10 (Tendering Procedures);

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Rules of Origin

5. Each Party shall apply to covered procurement of goods the rules of origin that it applies in the normal course of trade to those goods.

Offsets

6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets at any stage of a procurement.

Measures Not Specific to Procurement

7. The provisions of 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.

ARTICLE 7.5

Publication of Procurement Information

1. Each Party shall promptly publish any measure of general application regarding covered procurement and any modification to this information, in the appropriate publications referred to in Appendix 2 of Annex XX (General Notes), including officially designated electronic media.

2. Each Party shall, on request, provide to another Party an explanation relating to such information.

ARTICLE 7.6

Publication of Notices

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice inviting suppliers to submit tenders, or where appropriate, applications for participation for that procurement, except in the circumstances described in paragraph 8 of Article 7.10 (Tendering Procedures). The notice shall be published in the electronic or paper media listed in Appendix 2 to Annex XX (General Notes), and each such notice shall be accessible during the entire period established for tendering for the relevant procurement.

2. Except as otherwise provided for in this Chapter, each notice of intended procurement shall include:

(a) a description of the intended procurement;

(b) the procurement method;

(c) any conditions that suppliers must fulfill to participate in the procurement;

(d) the name of the entity issuing the notice;

(e) the address and contact where suppliers may obtain all documents relating to the procurement;

(f) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(g) the address and the final date for the submission of tenders;

(h) the dates for delivery of the goods or services to be procured or the duration of the contract; and

(i) an indication that the procurement is covered by this Chapter.

3. Entities shall publish the notices in a timely manner through means which offer the widest possible and non-discriminatory access to the interested suppliers of the Parties. These means shall be accessible free of charge through a single point of access specified in Appendix 2 to Annex XX (General Notes)

Notice of Planned Procurement

4. Each Party shall encourage its procuring entities to publish in an electronic medium, listed in Appendix 2 to Annex XX (General Notes), as early as possible in the fiscal year, information regarding the entity's future procurement plans. Such notices should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

ARTICLE 7.7

Conditions for Participation

1. In assessing whether a supplier satisfies the conditions for participation, a Party, including its procuring entities:

(a) shall limit such conditions 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 and evaluate those capacities and abilities on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;

(b) shall base its determination solely on the conditions that the procuring entity has specified in advance in notices or tender documentation;

(c) 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 the given Party;

(d) may require relevant prior experience where essential to meet the requirements of the procurement; and

(e) allow all domestic suppliers and suppliers of another Party that satisfy the conditions for participation to be recognised as qualified suppliers and to participate in the procurement.

2. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy

(b) false declarations

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect upon the commercial integrity of the supplier; or

(f) failure to pay taxes.

Registration Systems and Qualification Procedures

3. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

4. Procuring entities shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another Party in its procurement.

5. A procuring entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where an entity rejects an application for qualification or ceases to recognise a supplier as qualified, that entity shall, on request of the supplier, promptly provide it a written explanation.

Multi-Use Lists

6. A procuring entity may establish or maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is published in the appropriate medium listed in Appendix 2 of Annex XX (General Notes).

7. The notice provided for in paragraph 6 shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) any deadlines for submission of applications for inclusion on the list;

(c) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;

(d) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(e) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and

(f) an indication that the list may be used for procurement covered by this Chapter.

8. 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.

ARTICLE 7.8

Tender Documentation and Technical Specification

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:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection therewith;

(c) all evaluation criteria to be considered in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the receipt of information by electronic means;

(e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) where there will be a public opening of tenders, the date, time, and place for the opening and, where appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, e.g., paper or electronic means; and

(h) any dates for the delivery of goods or the supply of services or the duration of the contract.

2. Where contracting entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any interested supplier of the Parties.

Technical Specifications

3. 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 between the Parties.

4. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist or otherwise, on national technical regulations, recognised national standards or building codes.

5. A procuring entity may not prescribe any technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or 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, words such as “or equivalent” are also included in the tender documentation.

6. 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.

7. For greater certainty, a 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.

Modifications

8. Where, prior to the award of a contract, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, or amends or reissues 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 7.9

Time Limits

A procuring entity shall provide suppliers sufficient time to submit applications to participate in a procurement and prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. Each Party shall apply time limits according to the conditions specified in Appendix 3 of Annex XX (General Notes).

ARTICLE 7.10

Tendering Procedures

1. Entities shall award their public contracts by open, selective or limited tendering procedures according to their national legislation in compliance with this Chapter and in a non-discriminatory manner.

Selective Tendering

2. “Selective tendering” means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

3. 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 subparagraphs 2 (a), (b), (c), (d), (e), (f) and (i) of Article 7.6 (Publication of Notices) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time-period for tendering, at least the information foreseen in subparagraphs 2 (g) and (h) of Article 7.6 (Publication of Notices) to the qualified suppliers that it notifies as specified in paragraph 2 of Appendix 3 to Annex XX (General Notes).

4. A procuring entity shall recognise as qualified suppliers such domestic suppliers and suppliers of another Party that meet the conditions for participation in a particular procurement, unless the procuring entity states in the notice of intended procurement or, where publicly available, in the tender documentation, any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

5. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, procuring entities shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

6. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed, under the conditions foreseen in Article 7.6 (Publication of Notices)

Limited Tendering

7. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of another Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 7.6 (Publication of Notices), 7.7 (Conditions for Participations), 7.8 (Tender Documentation and Technical Specification), 7.9 (Time Limits), 7.12 (Electronic Auctions), 7.13 (Negotiations) and 7.14 (Opening of Tenders and Contract Awards) only under the following circumstances:

(a) provided that the requirements of the tender documentation are not substantially modified where:

(i) no tenders were submitted, or no supplier 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;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(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 unforeseeable by the procuring entity, the goods or services cannot be obtained in time using an open or selective tendering procedure, and the use of such procedures would result in serious injury to the procuring entity;

(e) for purchases made on a commodity market;

(f) where a procuring entity procures prototypes or a first product or service which are 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 that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, public auction or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

8. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 7 of this Article. Each such report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 7 of this Article that justified the use of limited tendering.

ARTICLE 7.11

Information Technology

The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement, particularly as regards tender opportunities offered by entities, while respecting the principles of transparency and non-discrimination.

ARTICLE 7.12

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 7.13

Negotiations

1. A Party may provide for its 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. Procuring entities shall not, in the course of negotiations, discriminate between participating suppliers.

3. An 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) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 7.14

Opening of Tenders and Contract Awards

Treatment of Tenders

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders. It also shall treat tenders in confidence until at least the opening of the tenders.

2. Where a procuring entity provides suppliers with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

3. A procuring entity shall require that, in order to be considered for an award, a tender shall be submitted:

(a) in writing and shall, at the time of opening, comply with the essential requirements specified in the notices and tender documentation; and

(b) by a supplier that satisfies any conditions for participation.

4. 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 satisfies the conditions for participation and is fully capable of undertaking the contract and whose tender is determined to be the most advantageous solely on the

basis of the requirements and evaluation criteria specified in the notices and tender documentation, or where price is the sole criterion, the lowest price.

5. 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 can comply with the conditions of participation and is capable of fulfilling the terms of the contract.

6. A procuring entity may not cancel a procurement or terminate or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

ARTICLE 7.15

Transparency in Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decisions and, on request, shall do so in writing. Subject to Article 7.16 (Disclosure of Information) a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the entity´s reasons for not selecting that supplier's tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. Not later than 72 days after an award, a procuring entity shall publish in a paper or electronic medium listed in Appendix 2 to Annex XX (General Notes), a notice that includes at least the following information about the contract:

(a) the name and address of the procuring entity;

(b) a description of the goods or services procured;

(c) the date of award;

(d) the name and address of the successful supplier;

(e) the contract value; and

(f) the procurement method used and, in cases where a procedure has been used pursuant to paragraph 8 of Article 7.10 (Tendering Procedures), a description of the circumstances justifying the use of such procedure.

Maintenance of Records

3. A procuring entity shall maintain reports and records of tendering procedures relating to covered procurement, including the reports provided for in paragraph 9 of

Article 7.10 (Tendering Procedures), and shall retain such reports and records for a period of at least three years after the award of a contract.

ARTICLE 7.16

Disclosure of Information

Provision of Information to a Party

1. On request of any Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter. The information shall include information on the characteristics and relative advantages of the successful tender.

Non-Disclosure of Information

2. No Party, procuring entity or review authority may disclose information that the person providing it has designated as confidential in accordance with domestic law, except with the authorisation of such person.

3. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, may not provide information to a particular supplier that might prejudice fair competition between suppliers.

4. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to release confidential information under this Chapter where release:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

ARTICLE 7.17

Domestic Review Procedures for Supplier Challenges

1. In the event of a complaint by a supplier of a Party regarding an alleged breach of this Chapter in the context of covered procurement, each Party shall encourage suppliers to seek clarification from its entities through consultations with a view to facilitating the resolution of any such complaints.

2. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure according to the due process principle through which a supplier may challenge alleged breaches of this Chapter arising in the context of covered procurements in which the supplier has, or has had, an interest.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than ten days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. 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, and to make appropriate findings and recommendations.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the 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.

6. A review body that is not a court shall either be subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings ("participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) decisions or recommendations relating to supplier challenges shall be 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:

(a) provide for 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) provide for, where a review body has determined that there has been a breach of this Chapter or, where the supplier does not have a right to challenge directly a breach of this Chapter under the domestic law of a Party, a failure by a procuring entity to comply with a Party's measures implementing this Chapter, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

ARTICLE 7.18

Modifications and Rectifications to Coverage

1. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its schedules in Annex XIX (Covered Entities), provided that it notifies the other Parties in writing and no Party objects in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Parties.

2. A Party may otherwise modify its coverage under this Chapter provided that:

(a) it notifies the other Parties in writing and offers at the same time acceptable compensatory adjustments to maintain a level of coverage comparable to that existing prior to the modification, except where provided for in paragraph 3; and

(b) no Party objects in writing within 30 days of the notification.

3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. Where a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity’s continued coverage under this Chapter.

ARTICLE 7.19

Small and Medium Sized Enterprises Participation

1. The Parties agree on the importance of the participation of small and medium sized enterprises (hereinafter referred to as “SMEs”) in government procurement. The Parties also recognise the importance of business alliances between suppliers of each Party, and in particular of SMEs.

2. The Parties agree to work jointly towards exchanging information and facilitating SMEs access to government procurement procedures, methods and contracting requirements, focused on SMEs special needs.

ARTICLE 7.20

Co-operation

1. The Parties recognise the importance of co-operation 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 small business suppliers.

2. According to Chapter 10 (Co-operation) the Parties shall endeavour to co-operate in matters such as:

(a) development and use of electronic communications in government procurement systems;

(b) exchange of experiences and information, such as regulatory frameworks, best practices and statistics.

ARTICLE 7.21

Further Negotiations

In case Colombia or any EFTA State offers in the future, a non-party, additional advantages with regard to its respective government procurement market access coverage agreed under this Chapter, it shall agree, upon request of any Party, to enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis.

CHAPTER 8

COMPETITION POLICY

ARTICLE 8.1

Objectives

1. The Parties recognise that anti-competitive practices have the potential to undermine the benefits of liberalisation arising from this Agreement. These practices are incompatible with the proper functioning of this Agreement, insofar as they may affect trade between Colombia and an EFTA State.

2. The Parties undertake to apply their respective competition laws with a view to proscribing such practices and to co-operate in matters covered by this Chapter. This co-operation includes notification, exchange of information, technical assistance and consultation.

ARTICLE 8.2

Anti-competitive Practices

1. For the purposes of this Chapter, "anti-competitive practices" refer to:

   (a) horizontal or vertical agreements, concerted practices or arrangements between enterprises, which have as their object or effect the prevention, restriction or distortion of competition; and

   (b) the abuse by one or more enterprises of a dominant position in a market.

2. The enforcement policy of the Parties' national authorities shall be consistent with the principles of transparency, non-discrimination and procedural fairness.

3. When applicable, Colombia may implement its obligations under this Article through the Andean Community competition laws and the Andean enforcement authority. Rights and obligations under this Chapter will only apply between Colombia and the EFTA States.

ARTICLE 8.3

Co-operation

1. The Parties shall make best efforts to co-operate, subject to their national laws and through their competent authorities, on issues concerning competition law enforcement.

2. Each Party shall notify another Party of competition enforcement activities that may affect important interests of the other Party. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity within its territory.

3. Each Party should, in accordance with its laws, take into consideration the important interests of the other Parties in the course of its enforcement activities on anticompetitive practices. If a Party considers that an anticompetitive practice may adversely affect another Party's important interests, it may transmit its views on the matter to such other Party through its competent authority. Without prejudice to any action under its competition laws and to its full freedom of ultimate decision, the Party so addressed should give appropriate consideration to the views expressed by the requesting Party.

4. If a Party considers that an anticompetitive practice carried out within the territory of another Party has a substantially adverse effect within its territory or on trade relations between the Parties, it may request that the other Party initiate appropriate enforcement activities. The request shall be as specific as possible about the nature and the effect of the anticompetitive practice. The requested Party shall consider whether to initiate an enforcement activity with respect to the anticompetitive practice identified in the request, and shall advise the requesting Party of its decision and of the outcome of such activity.

5. The Parties are encouraged to exchange information, including information that is not publicly available, provided that this does not affect any ongoing investigation. Any exchange of information shall be subject to the rules and standards of confidentiality applicable in the territory of each Party. No Party shall be required to provide information when this is contrary to its laws regarding disclosure of information. Each Party shall maintain the confidentiality of any information provided to it subject to the limitations that the submitting Party requests for the use of such information.

6. To further strengthen co-operation, the Parties may sign co-operation agreements.

ARTICLE 8.4

Consultations

To foster understanding between the Parties, or to address any matter arising under this Chapter, and without prejudice to the autonomy of each Party to develop, maintain and enforce its competition policy and legislation, a Party may request consultations within the Joint Committee. This request shall indicate the reasons for the consultations. Consultations shall be held promptly with a view to reaching a conclusion consistent with the objectives set forth in this Chapter. The Parties concerned shall give to the Joint Committee all the support and information needed, subject to the criteria and standards set out in paragraph 5 of Article 8.3 (Co-operation).

ARTICLE 8.5

State Enterprises and Designated Monopolies

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise and/or designated monopolies.

2. The Parties shall ensure that state enterprises and designated monopolies do not adopt or maintain anti-competitive practices affecting trade between the Parties, insofar as the application of this provision does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. This Article does not apply to government procurement.

ARTICLE 8.6

Dispute Settlement

No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

CHAPTER 9

TRANSPARENCY

ARTICLE 9.1

Publication and Disclosure of Information

1. Each Party shall ensure that its laws, regulations, administrative rulings of general application and their respective international agreements, which may affect the operation of this Agreement, are published or otherwise made publicly available in such a manner as to enable persons and other interested parties to become acquainted with them.

2. To the extent possible, the Parties shall publish or otherwise make available judicial decisions that may affect the operation of this Agreement.

3. The Parties shall promptly respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1 and 2.

4. Nothing in this Agreement shall require any Party to disclose confidential information, which would impede law enforcement, or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any economic operator.

5. Where a Party providing information to another Party in accordance with this Agreement designates the information as confidential, the other Party shall maintain the confidentiality of the information.

6. In case of any inconsistency between the provisions of this Article and provisions relating to transparency in other Chapters, the latter shall prevail to the extent of the inconsistency.

ARTICLE 9.2

Notifications

1. Unless otherwise provided for, a notification to a Party shall be deemed received when it has been delivered to and receipt has been confirmed by the responsible authority of that Party.

2. Each Party shall designate an authority responsible for receiving notifications and shall communicate such designation to the other Parties within 90 days following the entry into force of this Agreement.

CHAPTER 10

CO-OPERATION

ARTICLE 10.1

Scope and Objectives

1. The Parties shall decide to foster co-operation that allows support of trade capacity building (hereinafter referred to as "TCB") initiatives in order to expand and improve the benefits of this Agreement, on mutually agreed terms, in accordance with national strategies and policy objectives

2. The co-operation under this Chapter shall pursue the following objectives:

(a) strengthening and developing the existing relations with regard to TCB between the Parties;

(b) enhancing and creating new trade and investment opportunities, fostering competitiveness and innovation; and

(c) implementing this Agreement and optimising its results, in order to provide an impulse for economic growth and development and to contribute to the reduction of poverty.

ARTICLE 10.2

Methods and Means

1. The Parties shall co-operate with the objective of identifying and employing the most effective methods and means for the implementation of this Chapter. To this end they shall coordinate efforts with relevant international organisations and develop, where applicable, synergies with other forms of bilateral co-operation between the Parties.

2. Co-operation under this Chapter shall be carried out either through EFTA activities, bilaterally or through a combination of the two.

3. The Parties will use, among others, the following instruments for the implementation of this Chapter:

(a) exchange of information and experience;

(b) joint identification, development and implementation of projects and innovative activities of co-operation, including seminars and workshops; and

(c) technical and administrative co-operation.

4. The Parties may initiate and implement projects and activities related to TCB with the participation of national and international experts and institutions.

ARTICLE 10.3

Joint Committee and Contact Points

1. For the implementation of this Chapter, the following contact points are designated:

(a) for the EFTA-States: the EFTA Secretariat; and

(b) for Colombia: the Ministry of Trade, Industry and Tourism

2. The contact points shall be responsible for the channelling of the project proposals. In addition they are responsible for managing and developing of EFTA co-operation projects and are the links to the Joint Committee. For this purpose they shall establish rules and procedures in order to facilitate this work.

3. For co-operation on a bilateral basis taking place under the present Chapter, EFTA States providing such co-operation shall designate a Contact point.

4. The Joint Committee shall periodically review the implementation of this Chapter and act as a co-ordinating body as appropriate.

CHAPTER 11

ADMINISTRATION OF THE AGREEMENT

ARTICLE 11.1

Joint Committee

1. The Parties hereby establish the Joint Committee Colombia-EFTA comprising representatives of each Party. The Parties shall be represented by cabinet-level representatives or senior officials delegated by them for this purpose.

2. The Joint Committee shall:

(a) supervise the fulfillment and correct application of the provisions of this Agreement;

(b) evaluate the achieved results in the application of this Agreement;

(c) oversee the further elaboration of this Agreement including the possibility of removing remaining barriers to trade and other restrictive measures concerning commerce between Colombia and the EFTA States;

(d) supervise the work of all sub-committees and working groups established pursuant to this Agreement and recommend appropriate actions to them;

(e) establish its own rules of procedure;

(f) upon request of any Party, provide its opinion regarding the interpretation or application of this Agreement;

(g) establish the amount of remuneration and expenses that will be paid to panelists;

(h) prepare and adopt the Model Rules of Procedure for panels which shall include the standards of conduct for panelists; and

(i) consider any other matter that may affect the operation of this Agreement or is entrusted to it by the Parties.

3. The Joint Committee may:

(a) set up sub-committees and working groups as it considers necessary to assist it in accomplishing its tasks and delegate responsibilities to them. Except where specifically provided for in this Agreement, sub-committees and working groups shall work under a mandate established by the Joint Committee;

(b) decide to amend the tariff-elimination schedules in Annex II (Excluded Producst), IV (Fish and Other Marine Products), VIII (Dismantling of Import Duties for Industrial Products), specific rules of origin in Annex V (Rules of Origin and Mutual Administrative Co-operation in Customs Matters) and the list of entities in Appendices 1 through 3 to Annex XX (General Notes);

(c) except as otherwise provided for in this Article, consider and propose any amendments to the rights and obligations under this Agreement, subject to the fulfillment of the internal legal requirements of each Party; and

(d) convene the Parties for future negotiations to examine deepening the already reached liberalisation in the different sectors covered by this Agreement.

4. The Joint Committee shall meet whenever necessary but normally every two years in regular session and in special session by written request of any Party to the other Parties. Special sessions shall take place within 30 days of receipt of the last request, unless the Parties agree otherwise.

5. Unless otherwise agreed by the Parties, sessions of the Joint Committee shall be held alternately in Bogota and Geneva or by any technological means available. Such sessions shall be chaired jointly by Colombia and one of the EFTA States.

6. The Joint Committee may take decisions as provided for in this Agreement and on all other matters it may make recommendations.

7. The Joint Committee shall take decisions and make recommendations by consensus.

ARTICLE 11.2

Agreement Coordinators and Contact Points

1. Each Party shall designate an Agreement Coordinator and communicate such designation to the other Parties within 90 days following the entry into force of this Agreement.

2. Unless otherwise specified in this Agreement, the Agreement Coordinators shall:

(a) work jointly to develop agendas, make other preparations for Joint Committee meetings and follow up on Joint Committee decisions as appropriate;

(b) act as a contact point to facilitate communications between the Parties on any matter covered by this Agreement;

(c) on the request of a Party, identify the office or official responsible for a given matter and assist in facilitating communication as necessary; and

(d) address any other matter entrusted to it by the Joint Committee.

3. Each Party shall be responsible for the operation and expenses of its designated Agreement Coordinator.

CHAPTER 12

DISPUTE SETTLEMENT

ARTICLE 12.1

Co-operation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation, consultations or other means to reach a mutually satisfactory resolution of any matter that might affect its operation.

ARTICLE 12.2

Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement, in particular when a Party considers that a measure of another Party is inconsistent with the obligations of this Agreement.

ARTICLE 12.3

Choice of Forum

1. Disputes regarding the same matter arising under this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party.

2. Unless otherwise agreed by the disputing Parties, once the complaining Party has requested a WTO panel under Article 6 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (hereinafter referred to as the "DSU") or a panel under this Agreement pursuant to paragraph 1 of Article 12.6 (Request for a Panel), the forum selected shall be used to the exclusion of the other in respect of that matter.

3. Before a Party initiates a dispute settlement procedure against another Party under the WTO Agreement, that Party shall notify the other Parties of its intention.

ARTICLE 12.4

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties so agree. They may begin and be terminated at any time. They may continue while procedures of a panel established in accordance with this Chapter are in progress.

2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the Parties' rights in any other proceedings.

ARTICLE 12.5

Consultations

1. A Party may request in writing consultations with any other Party with respect to any matter referred to in Article 12.2 (Scope of Application). The requesting Party shall notify the other Parties in writing thereof.

2. Consultations shall take place in the Joint Committee if the Parties making and receiving the request for consultations so agree.

3. The request for consultations shall set out the reasons for the complaint, including an identification of the measure concerned and an indication of the legal basis of the complaint.

4. Consultations shall be held within:

(a) 30 days following the date of receipt of the request for consultations regarding urgent matters[18];

(b) 45 days following the date of receipt of the request for consultations for all other matters; or

(c) such other period as the consulting Parties may agree.

5. Consultations may be held in person or by any technological means available to the consulting Parties. If in person, consultations shall be held in the place agreed by the consulting Parties. If no agreement has been reached by the consulting Parties the consultations shall be held in the territory of the requested Party.

6. In a consultation, the consulting Parties shall provide sufficient information to enable a full examination of how the measure in force might affect the operation and

[18] Urgent matters include those concerning perishable goods, or otherwise involving goods or services that rapidly lose their trade value, such as certain seasonal goods and services.

application of this Agreement. The consulting Parties shall treat any confidential or proprietary information exchanged in the course of consultations in the same manner as the Party providing the information.

7. The consultations shall be confidential and without prejudice to the rights of the consulting Parties in any further proceedings.

8. The consulting Parties shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 12.6

Request for a Panel

1. A consulting Party may request in writing the establishment of a panel:

(a) if the requested Party has not responded to the request for consultations within 15 days of the date of receipt of such request;

(b) if consultations are not held within the periods established in Article 12.5 (Consultations) or within any other periods as the requested and requesting Parties may have agreed; or

(c) in the event that the consulting Parties fail to resolve a matter within 60 days of the date of the receipt of the request for consultations or as regards urgent matters within 45 days, or within any other period as they may agree.

2. The complaining Party shall deliver the request for the establishment of a panel to the Party complained against. The request shall contain the reason for the request, the identification of the specific measures, and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. A copy of the request shall be communicated to the other Parties.

4. Unless otherwise agreed by the disputing Parties, the panel shall be selected and perform its functions in a manner consistent with the provisions of this Chapter and the Model Rules of Procedure.

ARTICLE 12.7

Third Party Participation

1. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the disputing Parties and the panel, to make written submissions to the

panel, receive written submissions including annexes of the disputing Parties, attend hearings and make oral statements.

2. When delivering a written notice pursuant to paragraph 1, a third party to the dispute shall include an explanation of its particular interest in the dispute.

3. When making oral statements or written submissions, a third party shall respect the equal rights of the disputing Parties and not introduce new matters that go beyond the terms of reference. The oral statements or written submissions of the third party shall assist the panel in the resolution of the dispute, in particular by providing an additional perspective or a particular knowledge or insight.

4. The panel shall not consider oral statements or written submissions that do not meet the requirements set forth in paragraph 3. The panel is not required to address in its report the arguments made by the third party in its written submissions or oral statements.

ARTICLE 12.8

Qualifications of Panelists

1. Panelists shall:

   (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in the resolution of disputes arising under international trade agreements;

   (b) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;

   (c) be independent of and not be affiliated with or take instructions from, any Party; and

   (d) comply with the standards of conduct established by the Model Rules of Procedure.

2. If a disputing Party has justifiable doubts as to the panelist´s compliance with the standards of conduct established in the Model Rules of Procedure, it may propose to the other disputing Party the removal of the panelist. If the other disputing Party does not agree, or the panelist does not withdraw, the decision shall be made by the Secretary-General of the Permanent Court of Arbitration (hereinafter referred to as “the PCA”).

ARTICLE 12.9

Panel Selection

1. The panel shall comprise three members. The date of establishment of the panel shall be the date on which the chair is appointed.

2. Each disputing Party shall, within 20 days after the date of receipt by the Party complained against of the request for the establishment of the panel, appoint a panelist, who may be a national of said Party, propose up to four candidates to serve as the chair of the panel, and notify the other disputing Party in writing of the name of the panelist and its proposed candidates to serve as chair, including their relevant background information.

3. Within an additional ten days from the receipt by the Party complained against of the request for the establishment of the panel, the disputing Parties shall endeavour to agree on and appoint the chair from among the candidates proposed by both Parties. If the disputing Parties do not agree, the two panelists already appointed shall within an additional ten days, endeavour to agree on the chair from among the candidates proposed by the disputing Parties. If the panelists do not find it appropriate to appoint any of the proposed candidates they may appoint a different individual.

4. If all three members have not been designated or appointed within 40 days from the receipt by the Party complained against of the request for the establishment of the panel, the necessary designations shall be made, at the request of any of the disputing Parties, in the following manner:

(a) if a panelist has not been designated in accordance with paragraph 2, the Secrertary-General of the PCA shall name a member from among the list of candidates for the chair proposed by the disputing Parties; or

(b) if the chair has not been designated in accordance with paragraph 3, the Secretary-General of the PCA, shall appoint the chair from among the candidates for the chair proposed by the disputing Parties.

5. If an appointed panelist withdraws, is removed, or becomes unable to serve, a replacement shall be appointed in the following manner:

(a) in the case of a panelist appointed by a Party, that Party shall designate a new panelist within 15 days, failing which the replacement shall be appointed in accordance with subparagraph 4(a);

(b) in the case of the chair of the panel, the Parties shall agree on the appointment of a replacement within 30 days, failing which the replacement shall be appointed in accordance with subparagraph 4(b);

(c) if there are no remaining candidates proposed by the Parties, each Party shall propose up to three additional candidates within the same 30 days

as referred to in subparagraph (b), and the panelist or chair shall be appointed by the Secretary-General of the PCA within seven days thereafter from among the candidates proposed.

6. Any time period applicable to the proceedings shall be suspended for a period beginning on the date the panelist or chair withdraws, is removed, or becomes unable to serve and ending on the date the replacement is appointed.

7. If the Secretary-General of the PCA is unable to perform his obligations as set forth by this Article or is a national of a Party to the dispute, the designations shall be made by the Deputy Secretary-General of the PCA**.**

ARTICLE 12.10

Role of the Panel

1. The panel shall make an objective assessment of the matter under its consideration, in light of the relevant provisions of this Agreement interpreted in accordance with rules of interpretation of public international law and in light of the submissions and arguments of the disputing Parties as well as other information received during the proceedings, and formulate the necessary findings for settling the dispute in accordance with the request for the establishment of the panel and the terms of reference.

2. Unless otherwise agreed by the disputing Parties, within 20 days from the date of the receipt of the request for the establishment of the panel, its terms of reference shall be:

> "To examine, in light of the relevant provisions of this Agreement, the matter referred to it in the panel request and to make findings, determinations and recommendations as referred to in paragraph 3 of Article 12.13 (Reports of the Panel)."

3. The decisions of the panel including the adoption of the report shall normally be taken by consensus. If the panel is not able to reach a consensus, it may adopt its decisions by majority. No panel may disclose which panelists are associated with majority or minority opinions.

4. The reports, as well as any other decision of the panel, shall be communicated to the Parties. The reports shall be made public, unless the disputing Parties decide otherwise.

ARTICLE 12.11

Model Rules of Procedure

1. The procedure before the panel shall be conducted in accordance with the Model Rules of Procedure unless otherwise provided for in this Agreement. The disputing Parties may agree on different rules to be applied by the panel.

2. Within six months following the date of entry into force of this Agreement, the Joint Committee shall adopt the Model Rules of Procedure which shall ensure at least the following:

(a) each disputing Party shall have the right to at least one hearing before the Panel, as well as the opportunity to provide initial and rebuttal written submissions;

(b) the hearings before the panel shall be open to the public unless otherwise agreed by the disputing Parties;

(c) the protection of information designated as confidential by any of the Parties;

(d) at the request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from experts it deems appropriate;

(e) unless otherwise agreed by the disputing Parties, the hearings of the panel shall take place in Washington D.C. USA;

(f) in presenting oral arguments the disputing Parties have the right to use either their own language or English. Written submissions must be submitted in Spanish with an English translation or in English with a Spanish translation;

(g) each disputing Party's individual costs, including the costs for the translation of the written submissions as well as other costs related to the preparation and the carrying out of the proceedings, including the disputing Parties' administration costs, shall be borne by each disputing Party; and

(h) costs for the panelists and the administrative costs for the oral hearings, including interpretation, shall be borne by the disputing Parties in equal parts. The panel may however decide that the costs be distributed differently taking into account, *inter alia*, the particulars of the case and other circumstances that may be deemed relevant.

ARTICLE 12.12

Consolidation of Proceedings

Where more than one Party requests the establishment of a panel relating to the same matter or measure, and whenever feasible, a single panel should be established to examine complaints relating to the same matter.

ARTICLE 12.13

Reports of the Panel

1. Unless the disputing Parties otherwise agree, the panel shall submit an initial report within 90 days, and 50 days in the event of urgent matters, after the date of its establishment.

2. A disputing Party may submit written comments to the panel on its initial report within 14 days of its presentation. The panel shall present to the disputing Parties a final report within 30 days of presentation of the initial report.

3. The reports shall contain:

(a) the findings of fact and law together with the reasons therefor, including the determination as to whether a disputing Party has not conformed with its obligations under this Agreement or any other determination requested in the terms of reference;

(b) the recommendations for the resolution of the dispute and the implementation of the report;

(c) if requested, the findings about the level of adverse trade effects caused to a disputing Party by the other disputing Party's failure to conform with the obligations of this Agreement; and

(d) if requested, a reasonable period to comply with the final report.

ARTICLE 12.14

Request for Clarification of the Report

1. Within 10 days of the presentation of the final report, a disputing Party may submit a written request to the panel for clarification of any determination or recommendation in the report that the Party considers ambiguous. The panel shall respond to the request within 10 days following its submission.

2. The submission of a request pursuant to paragraph 1 shall not affect the time periods referred to in Article 12.16 (Implementation of the Report and Compensation) and Article 12.17 (Non-Implementation and Suspension of Benefits) unless the panel decides otherwise.

ARTICLE 12.15

Suspension and Termination of Procedure

1. The disputing Parties may agree to suspend the work of the panel at any time for a period not exceeding 12 months following the date of such agreement. If the work of the panel has been suspended for more than 12 months, the authority of the panel to consider the dispute shall lapse, unless the disputing Parties agree otherwise.

2. If the authority of the panel lapses and the disputing Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a disputing Party from introducing a new complaint regarding the same matter.

3. The disputing Parties may agree to terminate the proceedings before a panel at any time by jointly notifying the chairperson of the panel.

4. A complaining party may withdraw its complaint at any time before the final report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

5. A panel may, at any stage of the proceedings prior to release of the final report, propose that the disputing Parties seek to settle the dispute amicably.

ARTICLE 12.16

Implementation of the Report and Compensation

1. The rulings of the panel on the matters referred to in sub-paragraphs (a) and (d) of Article 12.13 (Reports of the Panel) shall be final and binding for the disputing Parties.

2. The Party complained against shall within 30 days after the issuance of the report notify the other Party as to when and how it will comply with the ruling. The Party complained against shall comply with the ruling promptly, unless the panel report sets a period of time for the implementation of the ruling pursuant to subparagraph 3(d) of Article 12.13 (Reports of the Panel) or the disputing Parties agree on a different period of time. The Party complained against shall take into account any recommendations of the panel for the resolution of the dispute and the implementation of the ruling.

3. The Party complained against may also notify the complaining Party within 30 days after the issuance of the report that it considers it impracticable to comply with the ruling, and offer compensation. If the complaining Party considers the proposed compensation to be unacceptable or not sufficiently detailed to asses properly, it may request consultation with the aim of reaching an agreement on compensation. If there is no agreement on compensation, the Party complained against must comply with the ruling of the original panel pursuant to paragraph 2.

ARTICLE 12.17

Non-Implementation and Suspension of Benefits

1. If the Party complained against:

   (a) fails to comply with the ruling in the report promptly or within any other time decided by the original panel or agreed by the disputing Parties; or

   (b) fails to comply with an agreement on compensation pursuant to paragraph 3 of Article 12.16 (Implementation of the Report and Compensation) within the time period agreed by the disputing Parties,

the complaining Party may suspend benefits granted under this Agreement equivalent to those affected by the measure that the panel has found to violate this Agreement.

2. In considering which benefits to suspend pursuant to paragraph 1, the complaining Party should first seek to suspend the application of benefits in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with the obligations of this Agreement. If the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

3. The suspension of benefits shall be temporary and shall only be applied by the complaining Party until the measure found to violate this Agreement has been brought into conformity with the rulings of the panel or until the disputing Parties have otherwise settled the dispute.

4. The complaining Party shall notify the Party complained against of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from that notification, the Party complained against may request the original panel to rule on any disagreement regarding the notified suspension, including whether the suspension of benefits is justified and whether the benefits which the complaining Party intends to suspend are excessive. The ruling of the panel shall be given within 45 days from that request. Benefits shall not be suspended until the panel has issued its ruling.

5. In case of disagreement as to whether the Party complained against has complied with the report promptly or within any other time period decided by the original panel or agreed by the disputing Parties, either of these Parties may refer the dispute to the original panel. The report of the panel shall normally be rendered within 45 days from the request. Benefits shall not be suspended until the panel has issued its ruling.

6. At the request of a disputing Party, the original panel shall determine the conformity with the rulings of the panel in this Chapter of any implementing measures adopted after the suspension of benefits by the complaining Party and whether the suspension of benefits should be terminated or modified. In this case the ruling of the panel shall be given within 30 days from the date of that request.

7. A panel under this Article shall whenever possible be composed of members of the original panel. If any of the panelists dies, withdraws, is removed or is otherwise unavailable, that panelist shall be replaced by a panelist appointed pursuant to paragraph 5 of Article 12.9 (Panel Selection).

CHAPTER 13

FINAL PROVISIONS

ARTICLE 13.1

Annexes, Appendices, and Footnotes

The Annexes including their Appendices and the footnotes to this Agreement constitute an integral part of this Agreement.

ARTICLE 13.2

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective legal and constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force in relation to Colombia and an EFTA State, on the first day of the third month following the date on which Colombia and that EFTA State deposited their instrument of ratification, acceptance or approval.

3. In relation to an EFTA State depositing its instrument of ratification, acceptance, or approval after this Agreement has entered into force, it shall enter into force on the first day of the third month following the deposit of its instrument.

ARTICLE 13.3

Amendments

1. Except as provided for in subparagraph 3 (b) of Article 11.1 (Joint Committee), amendments to this Agreement shall, after consideration by the Joint Committee, be submitted to the Parties for ratification, acceptance or approval in accordance with their respective legal and constitutional requirements.

2. Amendments shall enter into force on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval, unless the Parties agree otherwise.

3. The Parties may agree that an amendment shall enter into force for those Parties that have fulfilled their internal legal requirements, provided that Colombia and at least one EFTA State are among those Parties.

4. The text of the amendments and the instruments of ratification, acceptance or approval shall be deposited with the Depositary.

ARTICLE 13.4

Accession

1. Any State becoming a member of the European Free Trade Association (EFTA), may accede to this Agreement, provided that the Joint Committee decides to approve its accession, on such terms and conditions as may be agreed between such State and the Parties.

2. In relation to an acceding State, this Agreement shall enter into force on the first day of the third month following the last deposit of the instrument of approval of the Parties and of the instrument of accession of the acceding State.

ARTICLE 13.5

Withdrawal

1. Any Party may withdraw from this Agreement after it provides written notification to the other Parties: such withdrawal shall be effective six months after the date on which the notification is received by the Depositary, except as otherwise agreed by the Parties.

2. If Colombia withdraws, this Agreement shall expire when its withdrawal becomes effective.

3. In case any EFTA State withdraws from the Convention establishing the European Free Trade Association, it shall withdraw at the same time from this Agreement in accordance with paragraph 1.

ARTICLE 13.6

Relation to the Complementary Agreements

1. This Agreement shall not enter into force between Colombia and an EFTA State unless the complementary Agreement on Agriculture between Colombia and that EFTA State referred to in Article 1.1 (Establishment of a Free Trade Area) enters into force simultaneously. It shall remain in force as long as the complementary agreement remains in force between those Parties.

2. If an individual EFTA State or Colombia withdraws from the complementary Agreement on Agriculture between that EFTA State and Colombia, it shall be understood that it is also withdrawing from this Agreement. Both withdrawals shall become effective on the date the first withdrawal becomes effective pursuant to Article 13.5 (Withdrawal).

ARTICLE 13.7

Reservations

The present Agreement does not allow reservations within the meaning of Article 2(d) and Articles 19 to 23 of the Vienna Convention on the Law of Treaties.

ARTICLE 13.8

Authentic Texts

1. Except as provided in paragraph 2, the English and Spanish texts of this Agreement are equally valid and authentic. In case of divergence, the English text shall prevail.

2. The following texts are only valid and authentic in English or Spanish respectively:

(a) in English:

(i) Table 1 in Annex II (Excluded Products);

(ii) Table 1 in Annex III (Processed Agricultural Products);

(iii) Tables 1 and 2 in Annex IV (Fish and Other Marine Products); and

(iv) Appendices 2, 3, 4 and 5 to Annex XV (Lists of Specific Commitments).

(b) in Spanish:

(i) Table 2 in Annex II (Excluded Products);

(ii) Tables 2 and 3 in Annex III (Processed Agricultural Products);

(iii) Table 3 in Annex IV (Fish and Other Marine Products);

(iv) the Appendix to Annex VIII (Dismantling of Import Duties for Industrial Products); and

(v) Appendix 1 to Annex XV (Lists of Specific Commitments).

ARTICLE 13.9

Depositary

The Government of Norway shall act as Depositary.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments have signed this Agreement.

Done at Geneva, this 25th day of November 2008, in two originals in the English and Spanish languages. One original shall be deposited by the EFTA States with the Depositary and Colombia shall have the other original.

For the Republic of Iceland

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For the Republic of Colombia

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For the Principality of Liechtenstein

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For the Kingdom of Norway

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For the Swiss Confederation

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