

## TITLE IV

### TRADE IN SERVICES, ESTABLISHMENT AND ELECTRONIC COMMERCE

#### CHAPTER 1

#### GENERAL PROVISIONS

#### ARTICLE 107

##### Objective and Scope of Application

1. The Parties, reaffirming their commitments under the WTO Agreement, and with a view to facilitating their economic integration, sustainable development and continuous integration into the global economy, and considering the differences in the level of development of the Parties, hereby establish the necessary provisions for the progressive liberalisation of establishment and trade in services and for cooperation on electronic commerce.
2. Nothing in this Title shall be construed to require any Party to privatise public undertakings or to impose any obligation with respect to government procurement.

3. The provisions of this Title shall not apply to subsidies granted by a Party<sup>1</sup>.
4. The provisions of this Title shall not apply to services supplied in the exercise of governmental authority.
5. Subject to the provisions of this Title, each Party retains the right to exercise its powers and to regulate and introduce new regulations in order to meet legitimate public policy objectives.
6. This Title shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
7. Nothing in this Title shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment in this Title and its Annexes<sup>2</sup>.

---

<sup>1</sup> For the purposes of this paragraph, the term "subsidies" includes government-supported loans, guarantees, and insurance.

<sup>2</sup> The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

## ARTICLE 108

### Definitions

For the purposes of this Title:

- "economic integration agreement" means an agreement substantially liberalising trade in services and establishment pursuant to WTO rules;
- "juridical person of a Party" means a juridical person set up in accordance with the laws of that Party and having its registered office, central administration or principal place of business in the territory of that Party; in case a juridical person has only its registered office or central administration in the territory of a Party, it shall not be considered as a juridical person of that Party, unless its operations have a real and continuous link with the economy of that Party<sup>3</sup>;
- "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

---

<sup>3</sup> Shipping companies established outside of the European Union or of the signatory Andean Countries but controlled by nationals of a Member State of the European Union or of a signatory Andean Country, respectively, shall also benefit from the provisions of this Title, if their vessels are registered in accordance with the respective legislation of the Member State of the European Union or signatory Andean Country and carry the flag of a Member State of the European Union or a signatory Andean Country.

- "measures adopted or maintained by a Party" means measures adopted or maintained by:
  - (a) central, regional or local governments and authorities; and
  - (b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- "natural person of a Party" means a natural person that has the nationality of a Member State of the European Union or of a signatory Andean Country according to their respective domestic legislation<sup>4</sup>;
- "services" includes any service in any sector, except services supplied in the exercise of governmental authority;
- "services supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;
- "service supplier of a Party" means any natural or juridical person of a Party that seeks to supply or supplies a service;
- "supply of a service" includes the production, distribution, marketing, sale and delivery of a service.

---

<sup>4</sup> For purposes of this Title, a natural person of a Party having a dual nationality of a Member State of the European Union and a signatory Andean Country shall be considered exclusively a national of the Party in which he/she accredits his/her dominant and effective nationality. For these purposes, dominant and effective nationality of a Party shall be understood as the nationality of the Party in which the natural person has stronger ties, considering factors such as, among others, his/her habitual residence, his/her family links, his/her place of taxation or the place where he/she exercises his/her political rights.

## ARTICLE 109

### Working Groups

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

- (a) discussing regulatory issues concerning establishment, trade in services and electronic commerce;
- (b) proposing guidelines and strategies enabling the signatory Andean Countries to become a safe harbour for the protection of personal data. To this end, the working group shall adopt a cooperation agenda that shall define priority aspects for accomplishing that purpose, especially regarding the respective homologation processes of data protection systems;
- (c) seeking the necessary mechanisms to address the aspects covered under Article 162;
- (d) recommending mechanisms to assist Micro and SMEs in overcoming obstacles faced by them in the use of electronic commerce;
- (e) improving the security of electronic transactions and electronic government, among others;

- (f) encouraging the participation of the private sector in training and adoption of codes of conduct, contract models, guidelines and compliance mechanisms for electronic commerce, together with active participation in fora organised between the Parties;
- (g) establishing cooperation mechanisms on digital accreditation and certification for electronic transactions and mutual recognition of digital certificates; and
- (h) participating actively in regional and multilateral fora to promote the development of electronic commerce.

## CHAPTER 2

### ESTABLISHMENT

#### ARTICLE 110

##### Definitions

For the purposes of this Chapter:

- "branch of a juridical person" means a place of business without legal personality, which:
  - (a) has the appearance of permanence such as the extension of a parent body:

- (b) has a management; and
  - (c) is materially equipped to negotiate business with third parties; therefore third parties, although knowing that there will, if necessary, be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension;
- "economic activity" does not include activities carried out in the exercise of governmental authority, i.e. activities carried out neither on a commercial basis nor in competition with one or more economic operators;
  - "establishment" means any type of business or professional establishment<sup>5</sup> through:
    - (a) the constitution, acquisition or maintenance of a juridical person<sup>6</sup>; or
    - (b) the creation or maintenance of a branch or representative office;
- within the territory of a Party for the purpose of performing an economic activity;

---

<sup>5</sup> The term "business or professional establishment" includes the establishment in any productive economic activity, whether industrial or commercial, relating to the production of goods and supply of services.

<sup>6</sup> The terms "constitution" and "acquisition" of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

- "investor of a Party" means any natural or juridical person of that Party that seeks, through concrete actions to perform, is performing or has performed an economic activity in another Party through setting up an establishment;
- "measures of a Party affecting establishment" include measures with respect to all activities covered by the definition of establishment;
- "subsidiary of a juridical person of a Party" means a juridical person which is effectively controlled by another juridical person of that Party<sup>7</sup>.

## ARTICLE 111

### Scope of Application

This Chapter applies to measures adopted or maintained by the Parties affecting establishment<sup>8</sup> in any economic activity, with the exception of:

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

---

<sup>7</sup> A juridical person is controlled by another juridical person if the latter has the power to name a majority of its directors or otherwise to legally direct its actions.

<sup>8</sup> For greater certainty, and without prejudice to the obligations set out therein, this Chapter does not cover provisions on investment protection, such as provisions specifically relating to expropriation and fair and equitable treatment, nor does it cover investor-State dispute settlement procedures.

- (b) production of or trade in arms, munitions and war material;
- (c) audio-visual services;
- (d) national maritime cabotage<sup>9</sup>;
- (e) processing, disposition and waste of toxic waste, and
- (f) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (CRS) services; and
  - (iv) groundhandling services and airport operation services.

---

<sup>9</sup> Without prejudice to the scope of activities which may be considered as cabotage under the relevant domestic legislation, national cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a signatory Andean Country or a Member State of the European Union and another port or point located in the same signatory Andean Country or Member State of the European Union, including on its continental shelf, and traffic originating and terminating in the same port or point located in a signatory Andean Country or a Member State of the European Union.

## ARTICLE 112

### Market Access

1. With respect to market access through establishment, each Party shall accord to establishments and investors of another Party treatment no less favourable than that provided for in the specific commitments contained in Annex VII (List of Commitments on Establishment).
  
2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex VII (List of Commitments on Establishment), are defined as:
  - (a) limitations on the number of establishments whether in the form of numerical quotas, monopolies, exclusive rights or other establishment requirements such as economic needs test;
  
  - (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  
  - (c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test<sup>10</sup>;

---

<sup>10</sup> Subparagraphs 2(a), 2(b) and 2(c) do not cover measures taken in order to limit the production of an agricultural product.

- (d) limitations on the total number of natural persons that may be employed in a particular economic activity or that an establishment may employ and who are necessary for, and directly related to, the performance of an economic activity in the form of numerical quotas or the requirement of an economic needs test;
- (e) limitations on the participation of foreign capital in terms of a maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; and
- (f) measures which restrict or require specific types of establishment (subsidiary, branch, representative office) or joint ventures through which an investor of another Party may perform an economic activity<sup>11</sup>.

---

<sup>11</sup> Each Party may require that in the case of constitution of juridical person under its own law, investors must adopt a specific legal form. To the extent that such requirement is applied in a non-discriminatory manner, it does not need to be specified in Annex VII (List of commitments on establishment) in order to be maintained or adopted by the Parties.

## ARTICLE 113

### National Treatment

1. In sectors for which market access commitments are listed in Annex VII (List of Commitments on Establishment) by Colombia, and subject to any conditions and qualifications set out therein, Colombia shall grant to establishments and investors of the EU Party, with respect to all measures affecting establishment, treatment no less favourable than that it accords to its own like<sup>12</sup> establishments and investors.
2. In the sectors for which market access commitments are listed in Annex VII (List of Commitments on Establishment) by Peru, and subject to any conditions and qualifications set out therein, Peru shall grant to establishments and investors of the EU Party, with respect to all measures affecting establishment, treatment no less favourable than that it accords in like circumstances to its own establishments and investors<sup>13</sup>.
3. In the sectors for which market access commitments are listed in Annex VII (List of Commitments on Establishment) by the EU Party, and subject to any conditions and qualifications set out therein, the EU Party, with respect to all measures affecting establishment, shall grant to establishments and investors of the signatory Andean Countries treatment no less favourable than that it accords to its own like establishments and investors.

---

<sup>12</sup> For greater certainty, the term "like" is without prejudice of the term "like circumstances" that Colombia has agreed or agrees in other international agreements.

<sup>13</sup> For greater certainty, the rights which can be derived for the services and service suppliers of the EU Party from the obligations of Peru under the GATS remain fully enforceable within the framework of the WTO, particularly as concerns the application of principle of "like services and service suppliers" as included in Article XVII of the GATS.

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

#### ARTICLE 114

##### List of Commitments

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

#### ARTICLE 115

##### Other Agreements

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

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

## ARTICLE 116

### Investment Promotion and Review

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

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

## CHAPTER 3

### CROSS-BORDER SUPPLY OF SERVICES

#### ARTICLE 117

##### Definitions

For the purposes of this Chapter:

- "cross-border supply of services" means the supply of a service:
  - (a) from the territory of a Party into the territory of another Party (Mode 1); and
  - (b) in the territory of a Party to the service consumer of another Party (Mode 2);
- "measure by a Party affecting cross-border supply" includes measures in respect of:
  - (a) the purchase, payment or use of a service; and
  - (b) the access to and use of, in connection with the cross-border supply of a service, services which are required by that Party to be offered to the public generally.

## ARTICLE 118

### Scope of Application

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

- (a) audiovisual services;
- (b) national maritime cabotage<sup>14</sup>, and;
- (c) national and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services;

---

<sup>14</sup> Without prejudice to the scope of activities which may be considered as cabotage under the relevant domestic legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a signatory Andean Country or a Member State of the European Union and another port or point located in the same signatory Andean Country or Member State of the European Union, including on its continental shelf, as well as traffic originating and terminating in the same port or point located in a signatory Andean Country or a Member State of the European Union.

- (iii) computer reservation system (CRS) services; and
- (iv) groundhandling services and airport operation services.

## ARTICLE 119

### Market Access

1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of another Party treatment no less favourable than that provided for in the specific commitments listed in Annex VIII (List of Commitments on Cross-Border Supply of Services).
2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex VIII (List of Commitments on Cross-Border Supply of Services), are defined as:
  - (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; and
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test<sup>15</sup>.

## ARTICLE 120

### National Treatment

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

---

<sup>15</sup> Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

2. In the sectors where market access commitments are listed in Annex VIII (List of Commitments on Cross-Border Supply of Services) by Peru, and subject to any conditions and qualifications set out therein, Peru shall grant to services and service suppliers of the EU Party, with respect to all measures affecting the cross-border supply of services, treatment no less favourable than that it accords in like circumstances to its own services and service suppliers<sup>16</sup>.

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

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

---

<sup>16</sup> For greater certainty, the rights which can be derived for the services and service suppliers of the EU Party from the obligations of Peru under the GATS remain fully enforceable within the framework of the WTO, particularly as concerns the application of principle of "like services and service suppliers" as included in Article XVII of the GATS.

## ARTICLE 121

### List of Commitments

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

## CHAPTER 4

### TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

## ARTICLE 122

### Scope of Application

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

## ARTICLE 123

### Definitions

For the purposes of this Chapter:

- "business services sellers" means natural persons who are representatives of a service supplier of a Party, seeking temporary entry into the territory of another Party, for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. Business services sellers do not engage in direct sales to the general public and do not receive remuneration from a source located within the host Party;
- "business visitors" means natural persons working in a senior position who are responsible for setting up an establishment. Business visitors do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party;
- "contractual services suppliers" means natural persons employed by a juridical person of a Party which has no establishment in the territory of another Party and which has concluded with a final consumer in the latter Party a bona fide contract (other than through an agency as defined by the code 872 the United Nations Central Product Classifications (hereinafter referred to as "CPC")) to supply services requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services<sup>17</sup>;

---

<sup>17</sup> The service contract shall comply with the laws, regulations and requirements of the Party where the contract is executed.

- "graduate trainees" means natural persons who have been employed by a juridical person of a Party or its branch for at least one year, hold a university degree and are temporarily transferred to an establishment of the juridical person in the territory of another Party, for career development purposes or to obtain training in business techniques or methods<sup>18</sup>;
- "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of another Party and who have concluded a bona fide contract (other than through an agency as defined by the CPC code 872) to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services<sup>19</sup>;

---

<sup>18</sup> The recipient establishment may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For Austria, Czech Republic, Germany, France, Spain and Hungary, training must be linked to the university degree which has been obtained.

<sup>19</sup> The service contract shall comply with the laws, regulations and requirements of the Party where the contract is executed.

- "intra-corporate transferees" means natural persons who have been employed by a juridical person or its branch or have been partners in it for at least one year and who are temporarily transferred to an establishment that may be a subsidiary, branch or parent company of the juridical person in the territory of another Party. The natural person concerned shall belong to one of the following categories:
    - (a) "managers" means persons working in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including:
      - (i) directing the establishment or a department or sub-division thereof;
      - (ii) supervising and controlling the work of other supervisory, professional or managerial employees;
      - (iii) having the authority personally to recruit and dismiss, or recommend recruiting, dismissing or other personnel actions;
- or;

- (b) "specialists" means persons working within a juridical person who possess uncommon knowledge essential to the activity, research equipment, techniques, processes, procedures or management of the establishment. In assessing such knowledge, account shall be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession;
- "key personnel" means natural persons employed by a juridical person of one Party other than a non-profit organisation<sup>20</sup> and who are responsible for the setting-up or appropriate control, management and operation of an establishment, comprising "business visitors" responsible for setting up an establishment and "intra-corporate transferees"; and
  - "qualifications" means diplomas, certificates and other evidence (of formal qualification) issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of professional training.

---

<sup>20</sup> The reference to "other than a non-profit organization" only applies to Austria, Belgium, Cyprus, Czech Republic, Germany, Denmark, Estonia, Greece, Spain, Finland, France, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, The Netherlands, Portugal, Slovenia, United Kingdom and Peru.

## ARTICLE 124

### Key Personnel and Graduate Trainees

1. For every sector committed in accordance with Chapter 2 (Establishment) of this Title and subject to any reservations listed in Annex VII (List of Commitments on Establishment) or in Appendix 1 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes), each Party shall allow investors of another Party to employ in their establishment natural persons of that other Party, provided that such employees are key personnel or graduate trainees as defined in Article 123. The entry and temporary stay of key personnel and graduate trainees shall be for a period of up to three years<sup>21</sup> for intra-corporate transferees, 90 days in any 12 month period for business visitors, and one year for graduate trainees.
2. For every sector committed in accordance with Chapter 2 (Establishment) of this Title, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Appendix 1 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes), are defined as discriminatory limitations and as limitations on the total number of natural persons that an investor may employ as key personnel and graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test.

---

<sup>21</sup> For Colombia, the maximum length of stay for intra-corporate transferees is two years, renewable for an additional year. For Peru, the work contract may be up to three years. However, the length of stay for intra-corporate transferees is up to one year, renewable provided that the conditions which motivated its granting are maintained.

## ARTICLE 125

### Business Services Sellers

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

## ARTICLE 126

### Contractual Services Suppliers

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

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

- (a) legal advisory services in respect of public international law and foreign law; in the case of the EU Party, European Union law (hereinafter referred to "EU law") shall not be considered as public international law or foreign law;
- (b) accounting, and book-keeping services;
- (c) taxation advisory services;
- (d) architectural services;
- (e) urban planning and landscape architectural services;
- (f) engineering services;
- (g) integrated engineering services;
- (h) medical (including psychologists) and dental services;
- (i) veterinary services;

- (j) midwives services;
- (k) services provided by nurses, physiotherapists and paramedical personnel;
- (l) computer and related services;
- (m) market research and opinion polling;
- (n) management consulting services;
- (o) services related to management consulting;
- (p) design services;
- (q) chemical engineering, pharmaceuticals, and photochemistry;
- (r) services in cosmetics technology;
- (s) specialised services in technology, engineering, marketing and sales for the automotive sector;
- (t) commercial design services and marketing for the fashion textile industry, garments, footwear and articles; and
- (u) maintenance and repair of equipment, including transportation equipment notably in the context of an after-sales or after-lease services contract.

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

- (a) legal advisory services in respect of public international law and foreign law (in the case of the EU Party, EU law shall not be considered as public international law or foreign law);
- (b) accounting, and book-keeping services;
- (c) taxation advisory services;
- (d) architectural services;
- (e) urban planning and landscape architectural services;
- (f) engineering services;
- (g) integrated engineering services;
- (h) medical (including psychologists) and dental services;
- (i) veterinary services;

- (j) midwives services;
- (k) computer and related services;
- (l) market research and opinion polling;
- (m) management consulting services; and
- (n) services related to management consulting.

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

- (a) natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person which has obtained a service contract not exceeding 12 months;
- (b) natural persons entering the territory of another Party should be offering such services as employees of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the territory of such other Party; in addition, a natural person must possess, at the date of submission of an application for entry into the territory of a Party, at least three years of professional experience<sup>22</sup> in the sector of activity which is the subject of the contract;

---

<sup>22</sup> For purposes of this subparagraph, "professional experience" means that obtained after having reached the age of majority.

- (c) natural persons entering the territory of another Party must:
  - (i) hold a university degree or a qualification demonstrating knowledge of an equivalent level<sup>23</sup>; and
  - (ii) have professional qualifications where required for the exercise of an activity pursuant to the laws, regulations or requirements of the Party where the service is supplied.
- (d) natural persons shall not receive remuneration for the supply of services other than the remuneration paid by the juridical person where they are employed during their stay in the territory of another Party;
- (e) entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of no longer than six months or, in the case of Luxembourg, 25 weeks in any 12-month period or for the duration of the contract, whichever is shorter;
- (f) access accorded under this Article relates only to the service activity which is the subject of the contract, and does not confer entitlement to exercise the professional title of the Party where the service is provided;

---

<sup>23</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether such degree or qualification is equivalent to a university degree required in its territory.

- (g) the number of persons covered by the services contract shall not be higher than necessary to fulfil the contract, as it may be established by the law, regulations and requirements of the Party where the service is supplied;
- (h) other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes).

## ARTICLE 127

### Independent Professionals

1. The Parties reaffirm their respective rights and obligations arising from their commitments under the GATS as regards the entry and temporary stay of independent professionals.
2. Colombia and the EU Party shall allow the supply of services into their territory by independent professionals of the EU Party and Colombia respectively through presence of natural persons, subject to the conditions specified in the paragraph 4 and in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes) for each of the following sectors:
  - (a) legal advisory services in respect of public international law and foreign law (in the case of the EU Party, "EU law" shall not be considered as public international law or foreign law);

- (b) architectural services;
- (c) engineering services;
- (d) integrated engineering services;
- (e) computer and related services;
- (f) market research and opinion polling;
- (g) management consulting services;
- (h) services related to management consulting;
- (i) translation and interpretation services; and
- (j) specialised services in technology, engineering, marketing and sales for the automotive sector.

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

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

- (b) architectural services;
- (c) engineering services;
- (d) integrated engineering services;
- (e) computer and related services;
- (f) market research and opinion polling;
- (g) management consulting service; and
- (h) services related to management consulting.

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

- (a) natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in another Party and must have obtained a service contract for a period not exceeding 12 months;
- (b) natural persons entering the territory of another Party must possess, at the date of submission of an application for entry into such other Party, at least six years' professional experience in the sector of activity which is the subject of the contract;

- (c) the natural persons entering the territory of another Party must:
  - (i) hold a university degree or a qualification demonstrating knowledge of an equivalent level<sup>24</sup>; and
  - (ii) have professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements of the Party where the service is supplied;
- (d) the entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, 25 weeks in any 12-month period or for the duration of the contract, whichever is shorter;
- (e) access accorded under this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided; and
- (f) other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes).

---

<sup>24</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether such degree or qualification is equivalent to a university degree required in its territory.

## ARTICLE 128

### Short Term Visitors for Business Purposes

1. The Parties shall endeavour to facilitate, in conformity with their respective legislation, the entry and temporary stay in their territories of short term visitors for business purposes with a view to carrying out the following activities<sup>25</sup>:

- (a) research and design: technical, scientific and statistical researchers on behalf of a company located in the territory of another Party;
- (b) marketing research: personnel conducting research or analysis, including market research, on behalf of a company established in the territory of another Party;
- (c) trade fairs and exhibitions: personnel attending a trade fair for the purpose of promoting their company or its products or services; and
- (d) tourism personnel (hotel representatives, tour and travel agents, tour guides or tour operators) attending or participating in tourism conventions or tourism exhibitions or fairs, or conducting a tour that has begun in the territory of another Party;

---

<sup>25</sup> The activities listed under subparagraphs (c) and (d) only apply between Colombia and the EU Party.

provided that such short term visitors:

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

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

## CHAPTER 5

### REGULATORY FRAMEWORK

#### SECTION 1

#### PROVISIONS OF GENERAL APPLICATION

#### ARTICLE 129

##### Mutual Recognition

1. Nothing in this Title shall prevent a Party from requiring natural persons to have the necessary qualifications and/or professional experience required in the territory where the service is supplied, for the sector of activity concerned.
2. The Parties shall encourage the relevant professional bodies in their respective territories to jointly develop and provide the Trade Committee with recommendations on mutual recognition for the purpose of the fulfilment, in whole or in part, by investors and service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of investors and service suppliers and, in particular, of professional services.

3. Upon receipt of a recommendation as referred to in paragraph 2, the Trade Committee shall review, within reasonable time, such recommendation with a view to determining whether it is consistent with this Agreement.
4. When a recommendation has been found by the Trade Committee to be consistent with this Agreement pursuant to paragraph 3, and there is a sufficient level of correspondence between the relevant regulations of the Parties, the Parties shall, with a view to implementing that recommendation, negotiate through their competent authorities an agreement on mutual recognition of requirements, qualifications, licences and other regulations.
5. Any agreement reached under paragraph 4 shall be consistent with the relevant provisions of the WTO Agreement, in particular Article VII of the GATS.

#### ARTICLE 130

##### Transparency and Disclosure of Confidential Information

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

- (b) establish one or more enquiry points to provide specific information to investors and services suppliers of another Party, upon request, on all matters referred to in subparagraph (a). Such enquiry points are listed in Annex X (Enquiry Points Regarding Trade in Services, Establishment and Electronic Commerce). Enquiry points need not be depositories of laws and regulations.
2. Nothing in this Title shall require a Party to provide confidential information the disclosure of which would impede law enforcement or otherwise be contrary to public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

## ARTICLE 131

### Domestic Regulation

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

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

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

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

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

- (a) does not comply with the criteria outlined in Article VI:4 (a), (b), (c) of the GATS; and
- (b) could not reasonably have been expected of that Party at the time the specific commitments were made.

6. In determining whether a Party is in conformity with its obligations under paragraph 5, account shall be taken of international standards of relevant international organisations<sup>26</sup> applied by that Party.

---

<sup>26</sup> The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

## SECTION 2

### COMPUTER SERVICES

#### ARTICLE 132

##### Understanding on Computer Services

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

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

- (b) computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:
- (i) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems;
  - (ii) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programmes;
  - (iii) data processing, data storage, data hosting or database services;
  - (iv) maintenance and repair services for office machinery and equipment, including computers; or
  - (v) training services for staff of clients related to computer programmes, computers or computer systems, and not classified elsewhere;

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

## SECTION 3

### POSTAL AND COURIER SERVICES

#### ARTICLE 133

##### Scope of Application

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

## ARTICLE 134

### Definitions

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

- "individual license" means an authorisation, concession, or any other kind of permit granted to an individual supplier by a regulatory authority, which is required before supplying a given service; and
- "universal service" means the permanent supply of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.

## ARTICLE 135

### Prevention of Anti-Competitive Practices in the Postal and Courier Services Sector

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

## ARTICLE 136

### Universal Service

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

## ARTICLE 137

### Individual Licences

1. A Party shall only require an individual licence for services within the scope of the universal service<sup>27</sup>.

---

<sup>27</sup> In Colombia, the official postal operator or concessionary is a juridical person which supplies the universal postal service under a concession contract. The remaining postal services are subject to an expedited licensing regime administered by the Ministry of Information and Communications Technology. In Peru, the designated postal operator is a juridical person which under a concession granted by law, and with no exclusivity, has the obligation to supply the postal service in the whole country. The other postal services are subject to a permit regime granted by the Ministry of Transportation and Communications.

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

- (a) all licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

3. Where a Party denies granting an individual licence, that Party shall, upon request, inform the applicant of the reasons for the denial. Each Party shall establish or maintain an appeal or review procedure, as appropriate, before an independent body<sup>28</sup>. Such procedures shall be transparent, non-discriminatory, and based on objective criteria.

## ARTICLE 138

### Independence of Regulatory Bodies

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

---

<sup>28</sup> For greater certainty, the independent body may be of a judicial nature.

## SECTION 4

### TELECOMMUNICATIONS SERVICES

#### ARTICLE 139

##### Scope of Application

This Section sets out the principles of the regulatory framework for telecommunications services, other than broadcasting<sup>29</sup>, committed pursuant to Chapters 2 (Establishment), 3 (Cross-Border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes)<sup>3031</sup>.

---

<sup>29</sup> "Broadcasting" is defined as the uninterrupted chain of transmission required for the distribution of TV and radio programme signals to the general public, but does not cover contribution links between operators.

<sup>30</sup> Between the EU Party and Peru, this Section shall only apply to telecommunication services offered to the general public that involve the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

<sup>31</sup> Between the EU Party and Colombia, this Section shall also apply to value added telecommunications services. For greater certainty and for the purposes of this Section and Annex VII (List of Commitments on Establishment) and Annex VIII (List of Commitments on Cross-Border Supply of Services), for Colombia and the EU Party, "value added telecommunications services" are telecommunications services for which suppliers "add value" to the customer's information by enhancing its form or content or by providing for its storage and retrieval.

## ARTICLE 140

### Definitions

For the purposes of this Section:

- "essential telecommunications facilities" means facilities of a public telecommunications transport network and service<sup>32</sup> that:
  - (a) are exclusively or predominantly provided by a single or limited number of suppliers;  
and
  - (b) cannot feasibly be economically or technically substituted in order to provide a service;
- "interconnection" means linking with suppliers providing public telecommunications transport networks or services<sup>33</sup> in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
- "major supplier" means a supplier in the telecommunications sector which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for telecommunications services as a result of control over essential facilities or the use of its position in the market;

---

<sup>32</sup> For greater certainty, "public telecommunication transport service" shall be understood as defined in the Annex on Telecommunications of the GATS.

<sup>33</sup> For greater certainty, "public telecommunication transport service" shall be understood as defined in the Annex on Telecommunication of the GATS.

- "regulatory authority" means the body or bodies in the telecommunications sector in charge of the regulation of telecommunications referred to in this Section; and
- "telecommunications services" means all services consisting of the transmission and reception of electro-magnetic signals and does not cover the economic activity consisting of the provision of content which requires telecommunications for its transport.

## ARTICLE 141

### Competitive Safeguards on Major Suppliers

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

- (a) engaging in anti-competitive cross-subsidisation, or in margin squeeze<sup>34</sup>;

---

<sup>34</sup> The reference to "margin squeeze" only applies to the EU Party.

- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

## ARTICLE 142<sup>35</sup>

### Additional Obligations of Major Suppliers

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

---

<sup>35</sup> This Article is not part of the commitments assumed between Peru and the EU Party under this Agreement without prejudice to the domestic legislation of each Party. For Colombia and the EU Party, this Article shall only apply to telecommunication services that involve the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

- (b) obligations of non-discrimination in relation to interconnection and/or access:
  - (i) to ensure that major suppliers in its territory apply equivalent conditions in equivalent circumstances to telecommunications services suppliers of another Party providing equivalent services; and
  - (ii) for services and information to other suppliers under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries or partners;
- (c) obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning the cost accounting systems for the provision of specific types of interconnection and/or access; and
- (d) obligations to meet reasonable requests by the suppliers of another Party for access to and use of specific network elements and associated facilities, *inter alia*, in situations where the regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.

2. Pursuant to subparagraph 1(d), major suppliers may be required to, *inter alia*:
  - (a) grant third parties access to specified network elements and/or facilities;
  - (b) negotiate in good faith with undertakings requesting access;
  - (c) provide specified services on a wholesale basis for resale by third parties;
  - (d) grant access to technical interfaces, protocols or other key technologies, which are indispensable for the interoperability of networks, and that allow, upon request, interconnection at additional points other than the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities;
  - (e) provide co-location or other forms of facility sharing, including duct, building or mast sharing;
  - (f) provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks; and
  - (g) interconnect networks or network facilities.

## ARTICLE 143

### Regulatory Authorities

1. Regulatory authorities for telecommunications services shall be legally distinct and functionally independent from any supplier of telecommunications services.
2. The regulatory authority shall be sufficiently empowered to regulate the sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. The decisions of, and the procedures applied by, regulatory authorities shall be transparent and impartial with respect to all market participants.
4. A supplier affected by a decision of a regulatory authority of Colombia shall have the right to an appeal or review procedure, as appropriate, before a body independent of that regulatory authority.
5. A supplier affected by a decision of a regulatory authority of Peru or of the EU Party shall have the right to appeal such decision before an appeal body independent of the parties involved and which can be either judicial or non-judicial in character.

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

## ARTICLE 144

### Authorisation to Provide Telecommunications Services

1. The Parties shall endeavour to apply simplified procedures in authorising the provision of telecommunications services.
2. In accordance with the domestic legislation of each Party, an authorisation<sup>36</sup> may be required to address issues of attributions of numbers and frequencies. The terms and conditions for such authorisation shall be made publicly available.
3. Where an authorisation is required:
  - (a) all authorisation criteria and a reasonable period of time normally required to reach a decision concerning that application for an authorisation shall be made publicly available;

---

<sup>36</sup> For the purposes of this Section, the term "authorisation" shall be understood to include licenses, concessions, permits, registries or any other authorisation that a Party may require to supply telecommunications services.

- (b) the reasons for the denial of an authorisation shall be communicated in writing to the applicant upon request;
- (c) in case that an authorisation is unduly denied, the applicant shall be able to seek review of and/or appeal against the decision in accordance with the domestic legislation of the respective Party;
- (d) fees required by any Party for granting an authorisation shall not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable authorisation<sup>37</sup>.

## ARTICLE 145

### Interconnection

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

---

<sup>37</sup> Authorisation fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision. For greater certainty, this subparagraph shall not be construed to restrict the right of each Party to require payment for the allocation of scarce resources such as the radio spectrum.

2. Regulatory authorities of each Party shall require that suppliers that acquire information from another supplier during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
  
3. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:
  - (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and with a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
  
  - (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, which have regard to economic feasibility, and which are sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
  
  - (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

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

5. Each Party shall require that major suppliers make publicly available either their interconnection agreements or their reference interconnection offers.

6. Each Party shall ensure that a service supplier requesting interconnection with a major supplier has recourse, either at any time or after a reasonable period of time which has been made publicly known, to an independent domestic body, which may be a regulatory authority as referred to in Article 143, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time.

## ARTICLE 146

### Scarce Resources

Each Party shall ensure that any procedure for the allocation and use of scarce resources, including frequencies, numbers and rights-of-way, are carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses shall not be required.

## ARTICLE 147

### Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to adopt or maintain.
2. The obligations referred to in paragraph 1 shall not be regarded as anti-competitive *per se*, provided that such obligations are administered in a transparent, objective and non-discriminatory manner. The administration of such obligations shall also be neutral with respect to competition and shall not be more burdensome than necessary for the kind of universal service defined by each Party.
3. All suppliers should be eligible to ensure universal service and no supplier shall be *a priori* excluded. The designation shall be made through an efficient, transparent and non-discriminatory mechanism, in accordance with the domestic legislation of each Party.

## ARTICLE 148

### Telephone Directories

Each Party shall ensure that:

- (a) directories of all fixed telephone subscribers are available to users in a form approved by the national regulatory authority, whether printed or electronic, or both, and are updated on a regular basis, and at least once a year; and
- (b) organisations that provide the services referred to in subparagraph (a) apply the principle of non-discrimination to the treatment of information that has been provided to them by other organisations.

## ARTICLE 149

### Confidentiality of Information

Each Party shall ensure the confidentiality of telecommunications and related traffic data by means of a publicly available telecommunications networks and services without restricting trade in services.

## ARTICLE 150

### Disputes Between Suppliers

1. In the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations set out in this Section, the regulatory authority of the Party concerned shall, at the request of a party to the dispute, issue a binding decision to resolve the dispute within the shortest possible timeframe.
2. When such a dispute relates to cross-border supply of services, the regulatory authorities of the Parties concerned shall coordinate their efforts in order to achieve a resolution of the dispute.

## SECTION 5

### FINANCIAL SERVICES

#### ARTICLE 151

##### Scope of Application

This Section establishes the principles of the regulatory framework for all financial services committed pursuant to Chapters 2 (Establishment), 3 (Cross-Border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes) of this Title. This Section applies to measures affecting the supply of financial services<sup>38</sup>.

#### ARTICLE 152

##### Definitions

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

---

<sup>38</sup> Reference to the supply of a financial service in this Section shall mean the supply of a service as defined in Article 108.

- "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:
  - (a) insurance and insurance-related services:
    - (i) direct insurance (including co-insurance):
      - (A) life;
      - (B) non-life;
    - (ii) reinsurance and retrocession;
    - (iii) insurance inter-mediation, such as brokerage and agency; and
    - (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
  - (b) banking and other financial services (excluding insurance):
    - (i) acceptance of deposits and other repayable funds from the public;
    - (ii) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

- (iii) financial leasing;
- (iv) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (v) guarantees and commitments;
- (vi) trading, for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (A) money market instruments (including cheques, bills, certificates of deposits);
  - (B) foreign exchange;
  - (C) derivative products including, but not limited to, futures and options;
  - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (E) transferable securities; and
  - (F) other negotiable instruments and financial assets, including bullion;

- (vii) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
  - (viii) money broking;
  - (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  - (x) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
  - (xi) provision and transfer of financial information, and financial data processing and related software; and
  - (xii) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (i) through (xi) above, including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy;
- "financial service supplier" means any natural or juridical person of a Party that seeks to supply or supplies financial services. The term "financial service supplier" does not include a public entity;

- "new financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of another Party;
  
- "public entity" means:
  - (a) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
  
  - (b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;
  
- "self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing agency or other organisation or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers; for greater certainty, a self-regulatory organisation shall not be considered a designated monopoly for purposes of Title VIII (Competition);

- "services supplied in the exercise of governmental authority" for the purposes of Article 108, also includes:
  - (a) activities conducted by a central bank or a monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
  - (b) activities forming part of a statutory system of social security or public retirement plans; and
  - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government;

for purposes of the definition of "services supplied in the exercise of governmental authority" in Article 108, if a Party allows any of the activities referred to in subparagraphs (b) or (c) above to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, the definition of "services" as established in Article 108 shall include such activities.

## ARTICLE 153

### Clearing and Payment Systems

1. Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of another Party established in its territory access to payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to lender of last resort facilities of a Party.

2. Where a Party:

- (a) requires, as a condition for financial service suppliers of another Party to supply financial services on an equal basis with domestic financial service suppliers, membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organisation or association; or
- (b) provides, directly or indirectly, such entities privileges or advantages in supplying financial services;

such Party shall ensure that such entities accord national treatment to financial service suppliers of another Party resident in its territory.

## ARTICLE 154

### Prudential Carve-Out

1. Notwithstanding other provisions of this Title or Title V (Current Payments and Movements of Capital), a Party may adopt or maintain for prudential reasons, measures such as:

- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;

(b) ensuring the integrity and stability of its financial system.

2. Measures referred to in paragraph 1 shall not be more burdensome than necessary to achieve their aim, and shall not discriminate against financial services or financial service suppliers of another Party in comparison to its own like financial services or like financial service suppliers.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

4. Without prejudice to other means of prudential regulation of the cross-border supply of financial services, a Party may require the registration or authorisation of cross-border suppliers of financial services of another Party and of financial instruments.

## ARTICLE 155

### Effective and Transparent Regulation

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that that Party intends to adopt in order to give an opportunity for such persons to comment on the measure. Such measure shall be provided:

(a) by means of an official publication; or

(b) in other written or electronic form.

2. Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

3. Upon request of an applicant, the Party concerned shall inform the applicant of the status of his/her application. Where the Party concerned requires additional information from the applicant, it shall notify the applicant without undue delay.

4. Each Party shall make its best endeavours to ensure that international standards for regulation and supervision in the financial services sector and for the fight against money laundering and the financing of terrorism are implemented and applied in its territory. Such international standards are the Core Principle for Effective Banking Supervision of the Basel Committee, the Insurance Core Principles and Methodology of the International Association of Insurance Supervisors, the Objectives and Principles of Securities Regulation of the International Organisation of Securities Commissions, the Forty Recommendations on Money Laundering, and the Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force.

5. The Parties also take note of the "Ten Key Principles for Information Sharing" promulgated by the Finance Ministers of the G7 Nations and the Agreement on Exchange of Information on Tax Matters of the Organisation on Economic Cooperation and Development's (hereinafter referred to as "OECD") and the Statement on Transparency and exchange of information for tax purposes of the G20.

## ARTICLE 156

### New Financial Services

Each Party shall permit a financial service supplier of another Party established in its territory to supply any new financial service of a type similar to those services which that Party permits its own financial service suppliers to supply under its domestic law in like circumstances. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of such service. Where such authorisation is required, a decision shall be made within a reasonable period of time and the authorisation may only be refused for prudential reasons.

## ARTICLE 157

### Data Processing

1. Each Party shall permit a financial service supplier of another Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.
2. Each Party shall adopt adequate safeguards for the protection of the right to privacy and the freedom from interference with the privacy, family, home or correspondence of individuals, in particular with regard to the transfer of personal data.

## ARTICLE 158

### Recognition of Prudential Measures

1. A Party may recognise prudential measures of any other country in determining how the measures relating to financial services of that Party shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned, or may be granted autonomously.
2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for another Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with such Party, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation and, if appropriate, procedures concerning the sharing of information between the Parties to the agreement or arrangement. Where a Party accords recognition autonomously, such Party shall afford adequate opportunity for another Party to demonstrate that those circumstances exist.

## ARTICLE 159

### Specific Exceptions

1. Nothing in this Title shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing, in its territory, activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the domestic regulation of that Party, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement applies to activities or measures conducted or adopted by a central bank or monetary, exchange rate or credit authority or by any other public entity in pursuit of monetary and related credit or exchange rate policies.
3. Nothing in this Title shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

## SECTION 6

### INTERNATIONAL MARITIME TRANSPORT SERVICES

#### ARTICLE 160

##### Scope of Application and Principles

1. This Section sets out the principles for international maritime transport services committed pursuant to Chapters 2 (Establishment), 3 (Cross-border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes) of this Title.
2. In view of the existing levels of liberalisation between the Parties in international maritime transport, each Party shall:
  - (a) effectively apply the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis; and
  - (b) grant ships flying the flag of another Party or operated by service suppliers of another Party treatment no less favourable than that accorded to its own ships with regard to, inter alia, access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

3. In applying these principles, each Party shall:
  - (a) not introduce cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous bilateral agreements; and
  - (b) upon entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which may constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.
4. Each Party shall permit international maritime service suppliers, including maritime agency services of another Party, to have an establishment in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third country, whichever are more favourable.
5. Each Party shall make available to international maritime transport suppliers of another Party, on reasonable and non-discriminatory terms and conditions, the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

## ARTICLE 161

### Definitions

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

- "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
- "customs clearance services" (alternatively "customs house brokers services") means activities consisting in carrying out, on behalf of another party, customs formalities concerning import, export or through transport of cargoes, whether such services are the main activity of the service provider or a usual complement of its main activity;
- "freight forwarding services" means the activity consisting in organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;
- "international maritime transport" includes door-to-door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect includes the right to directly contract with providers of other modes of transport;

- "maritime agency services" means activities consisting in representing as an agent, within a given geographic area, the business interests of one or more shipping lines or shipping companies, for the following purposes:
  - (a) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; and
  - (b) organising, on behalf of shipping companies, the call of ships or take over cargoes when required;
  
- "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
  - (a) the loading/discharging of cargo to/from a ship;
  - (b) the lashing/unlashing of cargo; and
  - (c) the reception/delivery and safekeeping of cargoes before shipment or after discharge.

## CHAPTER 6

### ELECTRONIC COMMERCE

#### ARTICLE 162

##### Objective and Principles

1. The Parties, recognising that electronic commerce increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them, in particular by cooperating on issues arising from electronic commerce under the provisions of this Title.
2. The Parties agree that the development of electronic commerce shall be consistent with the international standards of data protection, in order to ensure the confidence of users of electronic commerce.
3. The Parties agree that a delivery by electronic means shall be considered as a provision of services, within the meaning of Chapter 3 (Cross-border Supply of Services), and shall not be subject to customs duties.

## ARTICLE 163

### Regulatory Aspects of Electronic Commerce

1. The Parties shall maintain a dialogue on regulatory issues arising from electronic commerce which shall *inter alia* address the following issues:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
- (b) the liability of intermediary service providers with respect to the transmission, or storage of information;
- (c) the treatment of unsolicited electronic commercial communications;
- (d) the protection of consumers in the field of electronic commerce from, among others, fraudulent and misleading commercial practices in the cross border context;
- (e) the protection of personal data;
- (f) the promotion of paperless trading; and
- (g) any other issue relevant for the development of electronic commerce.

2. The Parties shall conduct such cooperation, *inter alia*, by exchanging information regarding their respective relevant legislation and jurisprudence, as well as on the implementation of such legislation.

## ARTICLE 164

### Protection of Personal Data

The Parties shall endeavour, insofar as possible, and within their respective competences, to develop or maintain, as the case may be, regulations for the protection of personal data.

## ARTICLE 165

### Management of Paperless Trading

The Parties shall endeavour, insofar as possible, and within their respective competences, to:

- (a) make trade management documents available to the public in electronic form; and

- (b) accept trade administration documents<sup>39</sup> submitted electronically as the legal equivalent of their paper version.

## ARTICLE 166

### Consumer Protection

1. The Parties recognise the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and misleading commercial practices when consumers engage in electronic commerce transactions.
2. The Parties recognise the importance of reinforcing consumer protection and of cooperation among domestic consumer protection authorities, in activities relating to electronic commerce.

---

<sup>39</sup> For greater certainty, for Colombia and Peru, "trade administration documents" means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the imports or exports of goods.

## CHAPTER 7

### EXCEPTIONS

#### ARTICLE 167

##### General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, or a disguised restriction on establishment or cross-border supply of services, nothing in this Title and Title V (Current Payments and Capital Movements) shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order<sup>40</sup>;
- (b) necessary to protect human, animal or plant life or health, including those environmental measures necessary to this effect;

---

<sup>40</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of the society.

- (c) relating to the conservation of living and non-living exhaustible natural resources, if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title and Title V (Current Payments and Capital Movements)<sup>41</sup> including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety.

---

<sup>41</sup> For greater certainty, in the case of Peru, the execution of measures that prevent a monetary transfer through the equitable, non-discriminatory and good faith application of Peruvian Laws relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
  - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
  - (c) criminal or penal offences;
  - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
  - (e) ensuring compliance with judicial or administrative orders or rulings in judicial or administrative proceedings;
- shall not be considered inconsistent with the provisions of this Title and Title V (Current Payments and Capital Movements).

2. The provisions of this Title, Annexes VII (List of Commitments on Establishment) and VIII (List of Commitments on Cross-border Supply of Services) and Title V (Current Payments and Movement of Capital) shall not apply to the respective social security systems of the Parties or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.