TITLE III

TRADE IN GOODS

CHAPTER 1

MARKET ACCESS FOR GOODS

SECTION 1

COMMON PROVISIONS

ARTICLE 17

Objective

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

ARTICLE 18

Scope of Application

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

ARTICLE 19

Definitions

For the purposes of this Title:

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

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

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

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

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

ARTICLE 20

Classification of Goods

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

ARTICLE 21

National Treatment

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

2. For greater clarity, the Parties confirm that national treatment shall mean, with respect to any level of government or authority, a treatment no less favourable than the treatment accorded by that level of government or authority to like, directly competitive or substitutable domestic goods, including those originating in the territory over which that level of government or authority exercises jurisdiction[1].

[1] Colombia and the EU Party understand that this provision does not prevent the maintenance and enforcement of the liquor monopolies established in Colombia.

SECTION 2

ELIMINATION OF CUSTOM DUTIES

ARTICLE 22

Elimination of Customs Duties

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

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

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

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

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

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

7. Paragraph 6 shall not preclude any Party from:

(a) raising a customs duty to the level established in Annex I (Tariff Elimination Schedules) for the respective year, following a unilateral reduction; or

(b) maintaining or increasing a customs duty in accordance with the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as "DSU") or Title XII (Dispute Settlement).

SECTION 3

NON TARIFF MEASURES

ARTICLE 23

Import and Export Restrictions

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

ARTICLE 24

Fees and Charges

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

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

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

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

ARTICLE 25

Duties and Taxes on Exports

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

ARTICLE 26

Import and Export Licensing Procedures

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

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

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

ARTICLE 27

State Trading Enterprises

1. For the purposes of this Agreement, "state trading enterprises" means public and non-public enterprises, wherever located, at central and sub-central level, including marketing boards, which are entrusted with exclusive or special rights or privileges, including through legislative or constitutional powers, through which they influence via their purchases or sales the level or direction of imports and exports[3].

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

[3] For greater certainty, it is understood that liquor enterprises acting under the framework of the "*monopolio rentístico*" as referred to in Article 336 of the Political Constitution of Colombia are encompassed in this definition of State Trading Enterprises.

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

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

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

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

SECTION 4

AGRICULTURAL GOODS

ARTICLE 28

Scope of Application

This Section applies to measures adopted or maintained by the Parties in respect of trade in agricultural goods (hereinafter referred to as "agricultural goods") between them covered by the definition of Annex I of the WTO Agreement on Agriculture (hereinafter referred to as the "Agreement on Agriculture")[4].

[4] In the case of Colombia, for purposes of the application of this Article, "agricultural goods" also includes the following subheadings: 2905.45.00, 3302.10.10, 3302.10.90, 3823.11.00, 3823.12.00, 3823.13.00, 3823.19.00, 3823.70.10, 3823.70.20, 3823.70.30, 3823.70.90, 3824.60.00.

ARTICLE 29

Agricultural Safeguard

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

(a) the MFN rate applied; or

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 30

Price Band System

Unless otherwise provided in this Agreement:

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

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

ARTICLE 31

System of Entry Prices

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

ARTICLE 32

Export Subsidies and Other Equivalent Effect Measures

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

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

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

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

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

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

ARTICLE 33

Administration and Implementation of Tariff Rate Quotas

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

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

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

SECTION 5

MANAGEMENT OF ADMINISTRATIVE ERRORS

ARTICLE 34

Management of Administrative Errors

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

SECTION 6

SUB-COMMITTEES

ARTICLE 35

Sub-committee on Market Access

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

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

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

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

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

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

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

ARTICLE 36

Sub-committee on Agriculture

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

2. The Sub-committee on Agriculture shall:

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

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

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

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

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

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

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

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

CHAPTER 2

TRADE REMEDIES

SECTION 1

ANTI-DUMPING AND COUNTERVAILING MEASURES

ARTICLE 37

General Provisions

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

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

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

ARTICLE 38

Transparency

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

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

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

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

ARTICLE 39

Consideration of Public Interest

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

ARTICLE 40

Lesser Duty Rule

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

ARTICLE 41

Investigating Authorities

For the purposes of this Section,

– "investigating authority" means:

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

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

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

ARTICLE 42

Exclusion from the Dispute Settlement Mechanism

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

SECTION 2

MULTILATERAL SAFEGUARD MEASURES

ARTICLE 43

General Provisions

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

ARTICLE 44

Transparency

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

ARTICLE 45

Non-Simultaneous Application of Safeguard Measures

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

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

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

ARTICLE 46

Investigating Authority

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

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

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

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

ARTICLE 47

Exclusion from Dispute Settlement Mechanism

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

SECTION 3

BILATERAL SAFEGUARD CLAUSE

ARTICLE 48

Application of a Bilateral Safeguard Measure

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

2 A Party may only apply bilateral safeguard measures during the transitional period[5].

ARTICLE 49

Notification and Consultations

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

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

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

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

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

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

ARTICLE 50

Type of Measures

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

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

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

ARTICLE 51

Investigation Procedure

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

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

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

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

ARTICLE 52

Conditions and Duration of a Measure

1. No Party may apply a bilateral safeguard measure:

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

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

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

(ii) there is evidence that the domestic industry is adjusting;

the total period of application of a safeguard measure, including the period of initial application and any extension thereof, shall not exceed four years.

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

ARTICLE 53

Provisional Measures

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

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

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

ARTICLE 54

Compensation

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

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

ARTICLE 55

Re-Application of a Measure

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

ARTICLE 56

Outermost Regions of the European Union[6]

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

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

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

ARTICLE 57

Competent Authority

For the purpose of this Section, competent authority means:

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

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

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

CHAPTER 3

CUSTOMS AND TRADE FACILITATION

ARTICLE 58

Objectives

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

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

ARTICLE 59

Customs and Trade-Related Procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 60

Advance Rulings

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

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

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

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

ARTICLE 61

Risk Management

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

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

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

ARTICLE 62

Authorised Economic Operator

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

ARTICLE 63

Transit

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

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

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

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

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

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

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

ARTICLE 64

Relations with the Business Community

The Parties agree:

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

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

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

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

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

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

ARTICLE 65

Customs Valuation

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

ARTICLE 66

Customs Cooperation

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

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

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

(i) simplification and modernisation of customs procedures; and

(ii) relations with the business community;

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

(c) the promotion of coordination among related agencies.

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

ARTICLE 67

Mutual Assistance

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

ARTICLE 68

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

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

2. The Sub-committee shall, among others:

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

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

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

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

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

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

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

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

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

ARTICLE 69

Technical Assistance on Customs and Trade Facilitation

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

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

(a) enhancing institutional cooperation between the Parties;

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

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

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

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

ARTICLE 70

Implementation

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

CHAPTER 4

TECHNICAL BARRIERS TO TRADE

ARTICLE 71

Objectives

The objectives of this Chapter are:

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

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

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

ARTICLE 72

Definitions

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

2. The following definitions shall also apply:

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

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

ARTICLE 73

Relationship with the TBT Agreement

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

ARTICLE 74

Scope of Application

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

2. This Chapter does not apply to:

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

(b) sanitary and phytosanitary measures.

ARTICLE 75

Cooperation and Trade Facilitation

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

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

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

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

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

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

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

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

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

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

ARTICLE 76

Technical Regulations

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

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

ARTICLE 77

Standards

1. Each Party commits to:

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

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

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

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

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

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

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

ARTICLE 78

Conformity Assessment and Accreditation

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

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

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

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

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

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

2. To that end the Parties commit to:

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

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

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

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

ARTICLE 79

Transparency and Notification Procedures

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

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

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

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

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

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

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

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

ARTICLE 80

Border Control and Market Surveillance

The Parties commit to:

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

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

ARTICLE 81

Marking and Labelling

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) shall not establish:

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

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

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

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

ARTICLE 82

Trade Related Technical Assistance and Capacity Building

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

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

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

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

ARTICLE 83

Sub-committee on Technical Barriers to Trade

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

2. The Sub-committee shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 84

Exchange of Information

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

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

CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 85

Objectives

The objectives of this Chapter are to:

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

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

(c) ensure that SPS measures do not constitute unjustified barriers to trade between the Parties;

(d) develop mechanisms and procedures aimed at efficiently resolving the problems arising between the Parties as a consequence of the development and implementation of SPS measures;

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

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

ARTICLE 86

Rights and Obligations

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

ARTICLE 87

Scope of Application

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

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

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

ARTICLE 88

Definitions

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

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

ARTICLE 89

Competent Authorities

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

ARTICLE 90

General Principles

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

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

(a) in a transparent manner,

(b) without undue delays; and

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

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

ARTICLE 91

Import Requirements

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

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

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

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

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

6. When the importing Party has concluded that the products of an exporting Party meet its sanitary and phytosanitary import requirements, such Party will authorise the import of such products within 90 working days[7] following the date in which such conclusion was reached.

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

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

ARTICLE 92

Import Procedures

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

[7] For the purposes of this Chapter, "working days" means working days in the Party to which the deadline applies.

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

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

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

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

ARTICLE 93

Verifications

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

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

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

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

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

ARTICLE 94

Measures Linked to Animal and Plant Health

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

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

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

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

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

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

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

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

ARTICLE 95

Equivalence

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

ARTICLE 96

Transparency and Exchange of Information

1. The Parties shall:

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

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

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

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

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

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

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

ARTICLE 97

Notification and Consultation

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

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

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

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

ARTICLE 98

Emergency Measures

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

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

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

ARTICLE 99

Alternative Measures

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

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

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

ARTICLE 100

Special and Differential Treatment

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

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

(b) technical assistance according to Article 101 ; and/or

(c) a transition period of six months, which could be exceptionally extended for another period of no longer than six months.

ARTICLE 101

Technical Assistance and Strengthening of the Trade Capacities

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

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

ARTICLE 102

Collaboration on Animal Welfare

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

ARTICLE 103

Sub-committee on Sanitary and Phytosanitary Measures

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

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

3. The SPS Sub-committee shall:

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

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

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

(d) identify cooperation needs;

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

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

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

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

ARTICLE 104

Dispute Settlement

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

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

CHAPTER 6

ARTICLE 105

Movement of Goods

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

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

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

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

2. In addition to paragraph 1:

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

(b) on Technical Barriers to Trade matters:

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

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

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

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

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

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

CHAPTER 7

EXCEPTIONS

ARTICLE 106

Exceptions to the Title on Trade in Goods

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

(a) necessary to protect public morals or to maintain public order[8];

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

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

[8] 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.

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

(e) relating to the products of prison labour;

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

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

(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the Parties and not disapproved by them or which is itself so submitted and not so disapproved[9];

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

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

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

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