CHAPTER 2

TRADE IN GOODS

ARTICLE 2.1

Definitions

For the purposes of this Agreement, unless otherwise specified:

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

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

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

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

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

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

ARTICLE 2.2

Scope

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

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

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

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

ARTICLE 2.3

Rules of Origin and Mutual Administrative Assistance in Customs Matters

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

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

ARTICLE 2.4

Trade Facilitation

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

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

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

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

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

ARTICLE 2.5

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

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

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

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

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

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

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

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

ARTICLE 2.6

Dismantling of Import Duties

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

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

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

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

5. The Parties recognise that they may:

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

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

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

ARTICLE 2.7

Base Rate

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

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

ARTICLE 2.8

Export Duties

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

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

ARTICLE 2.9

Import and Export Restrictions

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

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

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

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

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

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

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

ARTICLE 2.10

Administrative Fees and Formalities

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

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

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

ARTICLE 2.11

National Treatment

Except as provided for in Annex X (Import and Export Restrictions and National Treatment), the Parties shall apply national treatment in accordance with Article III of the GATT 1994, including its interpretative notes, which is hereby incorporated and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.12

State Trading Enterprises

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

ARTICLE 2.13

Sanitary and Phytosanitary Measures

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

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

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

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

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

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

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

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

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

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

(d) discuss further developments of the SPS Agreement;

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

(f) establish technical expert groups, as needed.

ARTICLE 2.14

Technical Regulations

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

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

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

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

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

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

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

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

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

ARTICLE 2.15

Subsidies and Countervailing Measures

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

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

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

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

ARTICLE 2.16

Anti-Dumping

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

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

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

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

ARTICLE 2.17

Global Safeguard Measures

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

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

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

   (a) a bilateral safeguard measure; and

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

ARTICLE 2.18

Bilateral Safeguard Measures

1. During the transition period[1], where, as a result of the reduction or elimination of a customs duty under this Agreement, a product originating in the territory of a Party is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause[2] of serious injury or threat thereof to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take safeguard measures to the minimum extent necessary to remedy or prevent the injury, subject to the provisions of this Article.

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

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

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

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

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

---

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

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

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

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

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

6. No Party may maintain a bilateral safeguard measure:

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

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

(c) beyond the expiration of the transition period.

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

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

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

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

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

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

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

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

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

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

ARTICLE 2.19

General Exceptions

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

ARTICLE 2.20

National Security

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

ARTICLE 2.21

Balance-of-Payments

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

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

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