

ANNEX I

The Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, is amended as follows:

- (1) the title is replaced by the following:

‘TRADE AGREEMENT

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

- (2) the list of signatory Andean Countries is replaced by the following:

‘THE REPUBLIC OF COLOMBIA (hereinafter referred to as “Colombia”),

THE REPUBLIC OF PERU (hereinafter referred to as “Peru”)

and

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

hereinafter also referred to as the ‘signatory Andean Countries’,

of the other part.’.

- (3) the eleventh recital is replaced by the following:

‘CONSIDERING the difference in economic and social development among the Andean Countries as well as between the signatory Andean Countries and the European Union and its Member States;’.

- (4) in Article 9(1), the words ‘to the territories of Colombia and Peru’ are replaced by the words ‘to the territories of Colombia, Peru and Ecuador’.

- (5) in Article 11, the fifth indent is replaced by the following:

‘— “person” means a natural ^(3a) or juridical person.

^(3a) In Ecuadorian law, a “physical person” (“*persona física*”) is referred to as a “natural person” (“*persona natural*”).’.

- (6) in Article 12, paragraph 3 is replaced by the following:

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

- (7) in Article 13, paragraph 3 is replaced by the following:

‘3. The Trade Committee may examine the impact of this Agreement on the micro, small and medium-sized enterprises (hereinafter referred to as “Micro and SMEs”) of the Parties ^(4a), including any resulting benefits.

^(4a) In the case of Ecuador, this examination may include the impact on the Actores de la Economía Popular y Solidaria (“AEPYS”) (Popular and Solidarity Economy Stakeholders).’.

- (8) in Article 30, subparagraph (a) is replaced by the following:

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

- (9) Article 41 is replaced by the following:

‘Article 41

Investigating Authorities

For the purposes of this Section, “investigating authority” means:

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

- (b) with respect to Peru, the National Institute for the Defense of Competition and Protection of Intellectual Property, or its successor;
- (c) with respect to Ecuador, the Ministry of Foreign Trade, or its successor; and
- (d) with respect to the EU Party, the European Commission.’.

(10) Article 46 is replaced by the following:

‘Article 46

Investigating Authority

For the purposes of this Section, “investigating authority” means:

- (a) with respect to Colombia, the Ministry of Trade, Industry and Tourism, or its successor;
- (b) with respect to Peru, the National Institute for the Defense of Competition and Protection of Intellectual Property;
- (c) with respect to Ecuador, the Ministry of Foreign Trade, or its successor; and
- (d) with respect to the EU Party, the European Commission.’.

(11) in Article 48, paragraph 1 is replaced by the following:

‘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 ^(9a) 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.

^(9a) For the purposes of this Article, with respect to Ecuador, serious injury or a threat of serious injury to domestic producers shall also be understood as serious injury or a threat of serious injury in an infant industry.’.

(12) in Article 54, paragraph 2 is replaced by the following:

‘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. ^(10a)

^(10a) With respect to Ecuador, compensation in the form of concessions or the suspension of substantially equivalent concessions shall take place only after the bilateral safeguard measure has been applied for three years.’.

(13) Article 57 is replaced by the following:

‘Article 57

Competent Authority

For the purpose of this Section, “competent authority” means:

- (a) for Colombia, the Ministry of Trade, Industry and Tourism, or its successor;
- (b) for Peru, the Ministry of Foreign Trade and Tourism, or its successor;
- (c) for Ecuador, the Ministry of Foreign Trade, or its successor; and
- (d) for the EU Party, the European Commission.’.

(14) Article 70 is replaced by the following:

‘Article 70

Implementation

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

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

(15) in Article 78, subparagraph 1(a) is replaced by the following:

‘(a) on acceptance of a declaration of conformity from the supplier ^(11a);

^(11a) Ecuador shall recognise a self-declaration from the supplier that the product conforms to the technical regulations of the European Union as sufficient proof of conformity with Ecuadorian technical regulations. This form of recognition shall remain in force until the EU Party and Ecuador agree on an alternative to replace it within the Trade Committee.’.

(16) in Article 113, the following paragraph is inserted:

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

(17) in Article 120, the following paragraph is inserted:

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

(18) in Article 123, subparagraph (b) of the sixth indent is replaced by the following:

‘(b) “specialists” means persons working within a juridical person who possess uncommon knowledge essential to the activity, research equipment, techniques, processes, procedures or management of the establishment. In assessing such knowledge, account shall be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession ^(33a);

^(33a) The EU Party acknowledges that membership of an accredited profession is not mandatory in Ecuador.’.

(19) in Article 124(1), the text in footnote ⁽³⁵⁾ is replaced by the following:

‘⁽³⁵⁾ For Colombia and Ecuador, the maximum length of stay for intra-corporate transferees is two years, renewable for an additional year. For Peru, the work contract may be up to three years. However, the length of stay for intra-corporate transferees is up to one year, renewable provided that the conditions which motivated its granting are maintained.’.

(20) in Article 126, the following paragraph is inserted:

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

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

(b) accounting, and book-keeping services;

- (c) architectural services;
- (d) urban planning and landscape architectural services;
- (e) engineering services;
- (f) integrated engineering services;
- (g) medical (including psychologists) and dental services;
- (h) veterinary services;
- (i) computer and related services;
- (j) market research and opinion polling;
- (k) management consulting services;
- (l) services related to management consulting;
- (m) design services;
- (n) chemical engineering, pharmaceuticals, and photochemistry;
- (o) services in cosmetics technology;
- (p) specialised services in technology, engineering, marketing and sales for the automotive sector;
- (q) commercial design services and marketing for the fashion textile industry, garments, footwear and articles; and
- (r) maintenance and repair of equipment, including transportation equipment notably in the context of an after-sales or after-lease services contract.;

(21) in Article 127, the following paragraph is inserted:

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

- (a) legal advisory services in respect of public international law and foreign law (in the case of the EU Party, EU law shall not be considered as public international law or foreign law);
- (b) architectural services;
- (c) engineering services;
- (d) integrated engineering services;
- (e) computer and related services;
- (f) market research and opinion polling;
- (g) management consulting services;
- (h) services related to management consulting; and
- (i) specialised services in technology, engineering, marketing and sales for the automotive sector.’

(22) in Article 128(1), the text in footnote ⁽³⁹⁾ is replaced by the following:

‘⁽³⁹⁾ The activities listed under subparagraphs (c) and (d) only apply between Colombia and the EU Party, and Ecuador and the EU Party, respectively.’

(23) in Article 137(1), the text in footnote ⁽⁴¹⁾ is replaced by the following:

⁽⁴¹⁾ In Colombia, the official postal operator or concessionary is a juridical person which supplies the universal postal service under a concession contract. The remaining postal services are subject to an expedited licensing regime administered by the Ministry of Information and Communications Technology. In Peru, the designated postal operator is a juridical person which under a concession granted by law, and with no exclusivity, has the obligation to supply the postal service in the whole country. The other postal services are subject to a permit regime granted by the Ministry of Transportation and Communications. In Ecuador, the official postal operator supplies universal postal services in the whole country under a licence granted by law, and with no exclusivity. The remaining postal services are subject to a permit registration regime administered by the National Postal Agency.'

(24) Article 139 is replaced by the following:

'Article 139

Scope of Application

This Section sets out the principles of the regulatory framework for telecommunications services, other than broadcasting ⁽⁴³⁾, committed pursuant to Chapters 2 (Establishment), 3 (Cross-Border Supply of Services) and 4 (Temporary Presence of Natural Persons for Business Purposes). ⁽⁴⁴⁾ ⁽⁴⁵⁾ ^(45a).

⁽⁴³⁾ "Broadcasting" is defined as the uninterrupted chain of transmission required for the distribution of TV and radio programme signals to the general public, but does not cover contribution links between operators.

⁽⁴⁴⁾ Between the EU Party and Peru, this Section shall only apply to telecommunication services offered to the general public that involve the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

⁽⁴⁵⁾ Between the EU Party and Colombia, this Section shall also apply to value added telecommunications services. For greater certainty and for the purposes of this Section and Annex VII (List of Commitments on Establishment) and Annex VIII (List of Commitments on Cross-Border Supply of Services), for Colombia and the EU Party, "value added telecommunications services" are telecommunications services for which suppliers "add value" to the customer's information by enhancing its form or content or by providing for its storage and retrieval.

^(45a) Between the EU Party and Ecuador, this Section shall also apply to value added telecommunications services. For greater certainty and for the purposes of this Section and Annex VII (List of Commitments on Establishment) and Annex VIII (List of Commitments on Cross-Border Supply of Services), for Ecuador and the EU Party, "value added telecommunications services" are telecommunications services for which suppliers "add value" to the customer's information by enhancing its form or content or by providing for its storage and retrieval.'

(25) in Article 142, the text in footnote ⁽⁴⁹⁾ is replaced by the following:

⁽⁴⁹⁾ This Article is not part of the commitments assumed between Peru and the EU Party under this Agreement without prejudice to the domestic legislation of each Party. For Colombia and the EU Party, and Ecuador and the EU Party, respectively, this Article shall only apply to telecommunication services that involve the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.'

(26) in Article 154(1), the introductory text is replaced by the following:

'Notwithstanding other provisions of this Title or Title V (Current Payments and Movements of Capital), a Party may adopt or maintain for prudential reasons ^(52a), measures such as:

^(52a) The term "prudential reasons" may include the maintenance of the safety, soundness, integrity or financial responsibility of individual financial service suppliers.'

(27) in subparagraph 1(e) of Article 167, the text in footnote ⁽⁵⁵⁾ is replaced by the following:

⁽⁵⁵⁾ For greater certainty, in the case of Peru and Ecuador, the execution of measures that prevent a monetary transfer through the equitable, non-discriminatory and good faith application of Peruvian and Ecuadorian Laws, respectively, relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offences;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with judicial or administrative orders or rulings in judicial or administrative proceedings,

shall not be considered inconsistent with the provisions of this Title and Title V (Current Payments and Capital Movements).’.

(28) Article 170 is amended as follows:

(a) the following paragraph is inserted:

‘2a. In the case of Ecuador, where, in exceptional circumstances, payments and capital movements cause, or threaten to cause, serious difficulties to the liquidity of the Ecuadorian economy, Ecuador may adopt safeguard measures with regard to capital movements for a period not exceeding one year. These safeguard measures may be maintained beyond such period of time for justified reasons when it is necessary to overcome the exceptional circumstances that led to their application. In such event, Ecuador shall present in advance to the other Parties the reasons that justify their maintenance.’;

(b) paragraphs 4 and 5 are replaced by the following:

‘4. Under no circumstance may the measures referred to in paragraphs 1, 2 and 2a be used as a means for commercial protection or for the purpose of protecting a particular industry.

5. A Party adopting or maintaining safeguard measures pursuant to paragraphs 1, 2, 2a or 3 shall promptly inform the other Parties of their relevance and scope, and present, as soon as possible, a schedule for their removal.’.

(29) in Article 202, paragraphs 2 and 3 are replaced by the following:

‘2. The European Union and Colombia shall accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989 (hereinafter referred to as the “Madrid Protocol”) within 10 years from the signature of this Agreement. Peru and Ecuador shall make all reasonable efforts to adhere to the Madrid Protocol.

3. The European Union and Peru shall make all reasonable efforts to comply with the Trademark Law Treaty adopted in Geneva on 27 October 1994 (hereinafter referred to as the “Trademark Law Treaty”). Colombia and Ecuador shall make all reasonable efforts to adhere to the Trademark Law Treaty.’.

(30) Article 231 is amended as follows:

(a) in paragraph 1, the text in footnote ⁽⁷²⁾ is replaced by the following:

‘⁽⁷²⁾ For Colombia and the EU Party, this protection will include data protection of biological and biotechnology products. For Peru and Ecuador, the protection of the undisclosed information of such products shall be granted against disclosure and the practices that are contrary to honest commercial practices, in accordance with Article 39.2 of the TRIPS Agreement, in absence of specific legislation regarding thereof.’;

(b) paragraph 2 is replaced by the following:

‘2. According to paragraph 1, and subject to paragraph 4, when a Party requires, as a condition for approving the marketing of pharmaceutical or of agricultural chemical products which contain new chemical entities, the submission of undisclosed test or other data related to safety and efficacy, that Party shall grant an exclusivity period normally of five years from the date of marketing approval in the territory of that Party for pharmaceutical products, and 10 years for agricultural chemical products, period during which a third party may not commercialise a product based on such data, unless he/she presents proof of the explicit consent of the holder of the protected information or his/her own test data ^(72a).

^(72a) This provision shall apply with respect to Ecuador five years after the entry into force of the Protocol of Accession to this Agreement to take account of the accession of Ecuador.’.

(31) Article 232 is replaced by the following:

‘Article 232

The Parties shall cooperate to promote and ensure the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as the “UPOV Convention”), as revised on 19 March 1991 ^(72b), including the optional exception to the right of the breeder as referred to in Article 15(2) of such Convention.

^(72b) At the moment of the signature of the Protocol of Accession to this Agreement to take account of the accession of Ecuador, the International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised on 23 October 1978, is in force in Ecuador.’.

(32) in Article 258, paragraph 1 is replaced by the following:

‘1. For the purposes of this Title:

— “competition laws” means:

(a) for the EU Party, Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), and their implementing regulations and amendments;

(b) for Colombia, Ecuador and Peru, the following, as appropriate:

(i) domestic laws related to competition ^(76a) adopted or maintained in compliance with Article 260, and their implementing regulations and amendments; and/or

(ii) Andean Community legislation applying in Colombia, Ecuador or Peru and its implementing regulations and amendments;

— “competition authority” and “competition authorities” mean:

(a) for the EU Party, the European Commission; and,

(b) for Colombia, Ecuador and Peru, their respective national competition authorities.

^(76a) For Ecuador, Article 336 of the Constitución de la Republica del Ecuador (Constitution of Ecuador), establishing the obligation for the State to ensure transparency and efficiency in the markets and foster competition, and the Ley Orgánica de Regulación y Control del Poder de Mercado (Organic Law on the Regulation and Control of Market Forces).’.

(33) in Article 278, the text in footnote ⁽⁸¹⁾ is replaced by the following:

‘⁽⁸¹⁾ Peru and Ecuador interpret this Article against the background of Principle 15 of the Rio Declaration on Environment and Development.’

(34) Article 304 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

‘The Trade Committee shall establish at its first meeting a list of 30 individuals who are willing and able to serve as arbitrators.’;

(b) in paragraph 4, the first sentence is replaced by the following:

‘The Trade Committee shall establish, furthermore, additional lists of 15 individuals with sectorial experience on specific subjects covered by this Agreement.’.

(35) in Article 324, subparagraphs 2(d) and 2(e) are replaced by the following:

‘(d) strengthening commercial and institutional capacities in this field, for the implementation of this Agreement ^(88a) and making the most of it; and

(e) addressing the needs of cooperation identified in other parts of this Agreement ^(88b).

^(88a) Ecuador underlines that such initiatives should also contribute to the strengthening of production capacities and to the sustainable economic development of the Parties.

^(88b) In this context, Ecuador underlines the importance of also considering projects related to Chapter 4 of Title III of this Agreement.’
