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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 April 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 173 final - ANNEX 2
Subject:	ANNEX to the Proposal for a Council Decision on the signing, on behalf of the European Union, and provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the Accession of Ecuador

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Delegations will find attached document COM(2016) 173 final - ANNEX 2.

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Encl.: COM(2016) 173 final - ANNEX 2



Brussels, 4.4.2016  
COM(2016) 173 final

ANNEX 2

**ANNEX**

**to the**

**Proposal for a Council Decision**

**on the signing, on behalf of the European Union, and provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the Accession of Ecuador**

## ANNEX I

1. The title of the Agreement shall be amended as follows:

### 'TRADE AGREEMENT

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

2. Ecuador shall be incorporated in the list of 'signatory Andean Countries' at the end of the list, after the Republic of Peru, and the list of 'signatory Andean Countries' shall be amended as follows:

'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. Recital 11 of the Agreement shall be 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. Article 9(1) of the Agreement shall be replaced by the following:

'1. This Agreement shall apply, on the one hand, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied under the conditions established in those Treaties, and on the other hand, to the territories of Colombia, Peru, and Ecuador, respectively<sup>(3)</sup>.'

5. A footnote shall be introduced in the last indent of Article 11 of the Agreement that shall be amended as follows:

'– 'person' means a natural<sup>(3a)</sup> or juridical person;

<sup>(3a)</sup> In Ecuadorian Law, a "physical person" ("*persona física*") is referred to as "*persona natural*".'

6. Article 12(3) of the Agreement shall be 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. A footnote shall be introduced in Article 13(3) of the Agreement that shall be amended as follows:

'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<sup>(4a)</sup>, including any resulting benefits.

<sup>(4a)</sup> 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. Article 30(a) of the Agreement shall be 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 of the Agreement shall be replaced by the following:

'For the purpose 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 of the Agreement shall be replaced by the following:

'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. A footnote shall be introduced in Article 48(1) of the Agreement that shall be amended as follows:

'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<sup>(9a)</sup> 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.

<sup>(9a)</sup> For the purposes of this Article, with respect to Ecuador, serious injury or a threat of serious injury to domestic producers will also be understood as serious injury or a threat of serious injury in an infant industry.'

12. A footnote shall be introduced in Article 54(2) of the Agreement that shall be amended as follows:

'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. <sup>(10a)</sup>

<sup>(10a)</sup> With respect to Ecuador, the compensation in the form of concessions or suspension of substantially equivalent concessions shall take place only after three years of the imposition of the bilateral safeguard measure.'

13. Article 57 of the Agreement shall be replaced by the following:

'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 of the Agreement shall be replaced by the following:

'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 (Advance Rulings), with the exception of advance rulings on tariff classification, and Article 62 (Authorised Economic Operator) shall apply to Ecuador two years after the entry into force of this Protocol.'

15. A footnote shall be introduced in letter (a) of Article 78(1) of the Agreement that shall be amended as follows:

'(a) on acceptance of a declaration of conformity from the Supplier<sup>(11a)</sup>;

<sup>(11a)</sup> 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 of the Agreement:

(a) The following paragraph is inserted as paragraph (4):

'4. 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.'

(b) Paragraph (4) becomes a new paragraph (5).

17. In Article 120 of the Agreement:

(a) The following paragraph is inserted as paragraph (4):

'4. 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.'

(b) Paragraph (4) becomes a new paragraph (5).

18. A footnote is introduced in Article 123 (b) of the Agreement that shall be 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 (<sup>33a</sup>);

(<sup>33a</sup>) The EU Party acknowledges that in Ecuador membership to an accredited profession is not mandatory.'

19. The footnote to Article 124(1) of the Agreement shall be replaced by the following:

'(<sup>35</sup>) 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 of the Agreement:

- (a) The following paragraph is inserted as paragraph (4):

'4. 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 5 and in Appendix 2 of Annex IX (Reservations Regarding Temporary Presence of Natural Persons for Business Purposes) for each of the following sectors:

- (a) legal advisory services in respect of public international law and foreign law; in the case of the EU Party, European Union law (hereinafter referred to "EU law") shall not be considered as public international law or foreign law;
  - (b) accounting, and book-keeping services;
  - (c) 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.'
- (b) Paragraph (4) becomes a new paragraph (5) and in turn, references to paragraph (4) in paragraphs (2) and (3) become references to paragraph (5).

21. In Article 127 of the Agreement:

(a) The following paragraph is inserted as paragraph (4):

'4. 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 the paragraph 5 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.'

(b) Paragraph (4) becomes a new paragraph (5) and in turn, references to paragraph (4) in paragraphs (2) and (3) become references to paragraph (5).

22. The footnote to Article 128(1) of the Agreement shall be replaced by the following:

'<sup>(39)</sup> The activities listed under subparagraphs (c) and (d) only apply between Colombia and Ecuador, on the one hand, and the EU Party, on the other hand.'

23. The footnote to Article 137(1) of the Agreement shall be replaced by the following:

'<sup>(41)</sup> In Colombia, the official postal operator or concessionary is a juridical person which supplies the universal postal service under a concession contract. The remaining postal services are subject to an expedited licensing regime administered by the Ministry of Information and Communications Technology. In Peru, the designated postal operator is a juridical person which under a concession granted by law, and with no exclusivity, has the obligation to supply the postal service in the whole country. The other postal services are subject to a permit regime granted by the Ministry of Transportation and Communications. In Ecuador, the official postal operator supplies universal postal services in the whole country under a license 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 A footnote shall be introduced in Article 139 of the Agreement that shall be amended as follows:

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

<sup>(45a)</sup> 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. The footnote to Article 142 of the Agreement shall be replaced by the following:

'<sup>(49)</sup> This Article is not part of the commitments assumed between Peru and the EU Party under this Agreement without prejudice to the domestic legislation of each Party. For Colombia and Ecuador, on the one hand, and the EU Party, on the other hand, 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. A footnote shall be introduced in Article 154(1) of the Agreement that shall be amended as follows:

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

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

27. The footnote to Article 167(1)(e) of the Agreement shall be replaced by the following:

'<sup>(55)</sup> 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 of the Agreement shall be replaced by the following:

'1. In the case of Colombia, where, in exceptional circumstances, payments and capital movements cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in Colombia, Colombia 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, Colombia shall present in advance to the other Parties the reasons that justify their maintenance.

2. In the case of Peru and the EU Party, where, in exceptional circumstances, payments and capital movements, cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in Peru or in the European Union, Peru or the EU Party may respectively adopt safeguard measures with regard to capital movements for a period not exceeding one year.

3. 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.

4. The application of safeguard measures pursuant to paragraph 2 may be extended through their formal reintroduction in case of extremely exceptional circumstances and after having coordinated in advance between the Parties concerned regarding the implementation of any proposed formal reintroduction.

5. Under no circumstance may the measures referred to in paragraphs 1, 2 and 3 be used as a means for commercial protection or for the purpose of protecting a particular industry.

6. A Party adopting or maintaining safeguard measures pursuant to paragraphs 1, 2, 3 or 4 shall promptly inform the other Parties of their relevance and scope, and present, as soon as possible, a schedule for their removal.'

29. Paragraphs (2) and (3) of Article 202 of the Agreement shall be 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. In Article 231 of the Agreement:

(a) The footnote to paragraph (1) of Article 231 shall be replaced by the following

'<sup>(72)</sup> 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) A new footnote is introduced in paragraph (2) that shall be amended as follows:

'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<sup>(72a)</sup>.

<sup>(72a)</sup> This provision shall apply with respect to Ecuador five years after the entry into force of this Protocol.'

31. A new footnote is introduced in Article 232 of the Agreement that shall be amended as follows:

'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 'UPOV Convention'), as revised on 19 March 1991<sup>(72b)</sup>, including the optional exception to the right of the breeder as referred to in Article 15(2) of such Convention.

<sup>(72b)</sup> At the moment of signature of the Protocol of Accession of Ecuador to this Agreement, the International Convention for the Protection of New Varieties of Plants of 2 December 1961, revised on 23 October 1978, is in force in Ecuador.'

32. Article 258(1) of the Agreement shall be 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<sup>(76a)</sup> 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.

<sup>(76a)</sup> 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. The footnote to Article 278 of the Agreement shall be replaced by the following:

'<sup>(81)</sup> Peru and Ecuador interpret this Article against the background of Principle 15 of the Rio Declaration on Environment and Development.'

34. Paragraphs (1) and (4) in Article 304 of the Agreement shall be replaced by the following:

'1. The Trade Committee shall establish at its first meeting a list of 30 individuals who are willing and able to serve as arbitrators. Each Party shall propose five individuals to serve as arbitrators. The Parties shall also select by mutual agreement 10 individuals who are not nationals (<sup>(87)</sup>) of any of the Parties, and who shall act as chairperson of the arbitration panel.

....

4. The Trade Committee shall establish, furthermore, additional lists of 15 individuals with sectorial experience on specific subjects covered by this Agreement. To that effect, each Party shall nominate three individuals to serve as arbitrators. The Parties, by mutual agreement, shall select three candidates to chair the arbitration panel who are not nationals of any of the Parties. Each party to the dispute may

choose to designate its arbitrator among those proposed by any of the Parties for a sectorial list. When resorting to the selection procedure established in Article 303 paragraph 3, the Chair of the Trade Committee, or his/her delegate, may use a sectorial list upon agreement of the parties to the dispute.'

35. Two footnotes are introduced in letter (d) and (e) of Article 324(2) of the Agreement that shall be amended as follows:

(d) strengthening commercial and institutional capacities in this field, for the implementation of this Agreement<sup>(88a)</sup> and making the most of it; and

(e) addressing the needs of cooperation identified in other parts of this Agreement<sup>(88b)</sup>.

<sup>(88a)</sup> Ecuador, underlines that such initiatives should also contribute towards the strengthening of production capacities and towards sustainable economic development of the Parties.

<sup>(88b)</sup> In this context, Ecuador underlines the importance of also considering projects related to Title III, Chapter 4 of this Agreement.'