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PROPOSAL

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) 174 final - ANNEX 17
Subject:	ANNEX to the Proposal for a Council Decision on the conclusion 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

Delegations will find attached document COM(2016) 174 final - ANNEX 17.

Encl.: COM(2016) 174 final - ANNEX 17



Brussels, 4.4.2016
COM(2016) 174 final

ANNEX 17

ANNEX

to the

Proposal for a Council Decision

on the conclusion 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 XIX

(New Section D of Appendix 1 to Annex XII to the Agreement)

ANNEX XII

GOVERNMENT PROCUREMENT

APPENDIX 1

COVERAGE ON GOVERNMENT PROCUREMENT

'SECTION D

ECUADOR

SUBSECTION 1

CENTRAL GOVERNMENT ENTITIES

Title VI of this Agreement shall apply to the central government entities referred to in this Subsection as regards the procurement of goods, services and construction services indicated below, when the value of the procurement has been estimated, in accordance with Article 173, paragraphs 6 to 8, of this Agreement, as equal to or higher than the corresponding thresholds below:

Goods:

Threshold: 260 000 Special Drawing Rights (hereinafter referred to as "SDR") for the period of five years following the entry into force of this Agreement, and 130 000 SDR thereafter.

Services:

Threshold: 260 000 SDR for the period of five years following the entry into force of this Agreement, and 130 000 SDR thereafter.

Construction services:

Threshold: 6 000 000 SDR for the period of five years following the entry into force of this Agreement, and 5 000 000 SDR thereafter.

Procuring Entities:

CENTRAL GOVERNMENT

1. Presidencia de la República
2. Vicepresidencia de la República

NATIONAL SECRETARIATS

1. Secretaría Nacional de la Administración Pública

2. Secretaría Nacional de Planificación y Desarrollo (SENPLADES)
3. Secretaría Nacional de Comunicación
4. Secretaría de Gestión de Riesgos (SNGR)
5. Secretaría de Educación Superior Ciencia, Tecnología e Innovación.
6. Secretaría del Agua
7. Secretaría de Inteligencia
8. Secretaría General de la Presidencia
9. Secretaría Nacional de Gestión de la Política

COORDINATING MINISTRIES

1. Ministerio de Coordinación de Desarrollo Social
2. Ministerio de Coordinación de Patrimonio
3. Ministerio de Coordinación de los Sectores Estratégicos
4. Ministerio de Coordinación de la Política y Gob. Autónomos Descentralizados
5. Ministerio de Coordinación de la Política Económica
6. Ministerio de Coordinación de Seguridad
7. Ministerio de Coordinación de la Producción, Empleo y Competitividad
8. Ministerio de Coordinación de Conocimiento y Talento Humano

SECTORAL MINISTRIES¹

1. Ministerio de Agricultura, Ganadería, Acuacultura y Pesca
2. Ministerio del Ambiente
3. Ministerio de Cultura y Patrimonio
4. Ministerio de Defensa Nacional
5. Ministerio del Deporte
6. Ministerio de Desarrollo Urbano y Vivienda
7. Ministerio de Finanzas
8. Ministerio de Inclusión Económica y Social

¹ All ministries, their bodies, institutions or administrative entities subordinate and attached to them are covered, except for the public undertakings listed in subsection 3 of this Annex.

9. Ministerio de Industrias y Productividad
10. Ministerio del Interior
11. Ministerio de Justicia, Derechos Humanos y Cultos
12. Ministerio de Recursos Naturales No Renovables
13. Ministerio de Relaciones Exteriores y Movilidad Humana
14. Ministerio Comercio Exterior
15. Ministerio de Relaciones Laborales
16. Ministerio de Salud Pública
17. Ministerio de Telecomunicaciones y de la Sociedad de la Información
18. Ministerio de Transporte y Obras Públicas
19. Ministerio de Turismo
20. Ministerio de Educación
21. Ministerio de Electricidad y Energía Renovable

PUBLIC BANKS

1. Instituto Ecuatoriano de Crédito Educativo (IECE)
2. Banco del Estado (BEDE)
3. Corporación Financiera Nacional (CFN)
4. Corporación Nacional de Finanzas Populares y Solidarias (CONAFIPS)
5. Banco Nacional de Fomento (BNF)
6. Banco Ecuatoriano de la Vivienda (BEV)
7. Banco del Instituto Ecuatoriano de Seguridad Social (BIESS)
8. Banco Central del Ecuador

OTHER INSTITUTIONS

1. Servicio Nacional de Contratación Pública (SERCOP)
2. Servicio de Rentas Internas (SRI)
3. Servicio Nacional de Aduana (SENAE)
4. Servicio de Contratación de Obras (SECOB)

5. Autoridad Portuaria
6. Dirección Nacional de Aviación Civil
7. Dirección General del Registro Civil, Identificación y Cedulación

OTHER STATE BODIES

1. Asamblea Nacional
2. Consejo de la Judicatura
3. Consejo Nacional Electoral
4. Corte Constitucional
5. Consejo de Participación Ciudadana y Control Social
6. Tribunal Contencioso Electoral
7. Fiscalía General del Estado
8. Defensoría Pública
9. Defensoría del Pueblo
10. Contraloría General del Estado
11. Procuraduría General del Estado
12. Consejo Nacional de Control de Sustancias Estupefacientes y Psicotrópicos
13. Consejo Nacional de Evaluación y Acreditación – CONEA
14. Consejo Nacional de Zonas Francas – CONAZOFRA
15. Consejo Nacional de Telecomunicaciones
16. Superintendencia de Compañías
17. Superintendencia de Comunicación
18. Superintendencia de la Economía Popular y Solidaria
19. Superintendencia de Poder de Control del Mercado
20. Superintendencia de Telecomunicaciones
21. Superintendencia de Bancos y Seguros
22. Instituto Ecuatoriano de Seguridad Social
23. Cuerpo de Ingenieros del Ejército (only for peacetime civil construction procedures).

ENTITIES FROM THE EDUCATION SECTOR

1. Casa de la Cultura Ecuatoriana Benjamín Carrión
2. Consejo Nacional de Capacitación y Formación Profesional –CNCF
3. Escuela Politécnica del Ejército
4. Escuela Politécnica Nacional
5. Escuela Superior Politécnica Agropecuaria de Manabí Manuel Félix López
6. Escuela Superior Politécnica del Chimborazo
7. Escuela Superior Politécnica del Litoral
8. Universidad Agraria del Ecuador
9. Universidad Central del Ecuador
10. Universidad de Guayaquil
11. Universidad Estatal Amazónica
12. Universidad de Bolívar
13. Universidad Estatal de Cuenca
14. Universidad Estatal de Milagro
15. Universidad Estatal del Sur de Manabí
16. Universidad Estatal Península de Santa Elena
17. Universidad Laica Eloy Alfaro de Manabí
18. Universidad Nacional de Chimborazo
19. Universidad Nacional de Loja
20. Universidad Politécnica Estatal del Carchi
21. Universidad Técnica de Ambato
22. Universidad Técnica de Babahoyo
23. Universidad Técnica de Cotopaxi
24. Universidad Técnica de Machala
25. Universidad Técnica de Manabí
26. Universidad Técnica de Quevedo

27. Universidad Técnica del Norte
28. Universidad Técnica Luis Vargas Torres de Esmeralda
29. Instituto de Altos Estudios Nacionales.

Notes to this subsection

Title VI of this Agreement shall not apply in the following cases

1. MINISTERIO COORDINADOR DE SEGURIDAD, MINISTERIO DE DEFENSA NACIONAL, MINISTERIO DEL INTERIOR AND SECRETARÍA DE INTELIGENCIA: procurement of goods of a strategic nature necessary for national defence and public security, and; procurements of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the United Nations Central Product Classification (CPC) for the Comando Conjunto de las Fuerzas Armadas, the Ejército Nacional, the Armada Nacional, the Fuerza Aérea Ecuatoriana and the Policía Nacional.
2. MINISTERIO COORDINADOR DE DESARROLLO SOCIAL, DE EDUCACION AND ITS BODIES, INSTITUTIONS OR ADMINISTRATIVE ENTITIES SUBORDINATE TO, ATTACHED TO OR COORDINATED WITH IT: Services for the construction of educational entities (pre-school, elementary school and high school) (including via the Servicio de Contratación de Obras SECOB): drafting, design, printing, edition and publication of didactic materials, and purchase of school uniforms.
3. MINISTERIO DE INCLUSION ECONOMICA Y SOCIAL AND ITS BODIES, INSTITUTIONS OR ADMINISTRATIVE ENTITIES SUBORDINATE TO, ATTACHED TO OR COORDINATED WITH IT: procurements of the products provided for in Section 2 (Food products, beverages and tobacco; textiles, apparel and leather products) of the CPC intended for social assistance programmes.
4. MINISTERIO DE AGRICULTURA, GANADERÍA, ACUACULTURA Y PESCA, AND ITS BODIES, INSTITUTIONS OR ADMINISTRATIVE ENTITIES SUBORDINATE TO, ATTACHED TO OR COORDINATED WITH IT: procurements of food products, agricultural inputs and live animals related to agricultural support programmes and food assistance.
5. CONSEJO NACIONAL ELECTORAL. procurements for the preparation and organisation of elections and public consultations.

SUBSECTION 2

SUB-CENTRAL GOVERNMENT ENTITIES

Title VI of this Agreement shall apply to the sub-central government entities referred to in this Subsection as regards the procurement of goods, services and construction services when the value of the procurement has been estimated, in accordance with Article 173, paragraphs 6 to 8, of this Agreement, as equal to or higher than the corresponding thresholds below:

Goods

Threshold: 350 000 SDR for the period of five years following the entry into force of this Agreement, and 200 000 SDR thereafter.

Services

Threshold: 350 000 SDR for the period of five years following the entry into force of this Agreement, and 200 000 SDR thereafter.

Construction services:

Threshold: 6 000 000 SDR for the period of five years following the entry into force of this Agreement, and 5 000 000 SDR thereafter.

Procuring Entities:

- a) **All of the Gobiernos Autónomos Provinciales**
- b) **All of the Gobiernos Autónomos Municipales**

Notes to this subsection

1. Title VI of this Agreement does not cover procurements by the Gobiernos Autónomos Parroquiales.

SUBSECTION 3

OTHER COVERED ENTITIES

Title VI of this Agreement shall apply to entities listed in this Subsection as regards the procurement of goods, services and construction services indicated below when the value of the respective procurement, in accordance with Article 173, paragraphs 6 to 8, of this Agreement, is equal to or higher than the thresholds below:

Goods:

Threshold: 400 000 SDR

Services:

Threshold: 400 000 SDR

Construction services:

Threshold: 6 000 000 SDR for the period of five years following the entry into force of this Agreement, and 5 000 000 SDR thereafter

Procuring Entities:

Unless otherwise specified, Title VI of this Agreement applies to the national public undertakings listed below:

PUBLIC UNDERTAKINGS OF THE EXECUTIVE BRANCH

1. Astilleros Navales Ecuatorianos - ASTINAVE EP
2. Corporación Eléctrica del Ecuador - CELEC EP
3. Corporación Nacional de Telecomunicaciones - CNT EP
4. Empresa Eléctrica Pública de Guayaquil EP.
5. Empresa Nacional Minera - ENAMI EP
6. Empresa Pública de Exploración y Explotación de Hidrocarburos – PETROAMAZONAS EP
7. Empresa Pública Cementera del Ecuador EP
8. Empresa Pública Correos del Ecuador - CDE E.P.
9. Empresa Pública de Desarrollo Estratégico Ecuador - ESTRATEGICO EP
10. Empresa Pública de Hidrocarburos del Ecuador EP - PETROECUADOR
11. Empresa Pública de Innovación y Comercialización INVENTIO-ESPOL EP
12. Empresa Pública Flota Petrolera Ecuatoriana - EP FLOPEC
13. Empresa Pública TAME Línea Aérea del Ecuador - TAME EP

14. Empresa Pública de Fármacos ENFARMA EP
15. Ferrocarriles del Ecuador Empresa Pública - FEEP
16. Hidroeléctrica Coca Codo Sinclair - COCASINCLAIR EP
17. Hidroeléctrica del Litoral - HIDROLITORAL E.P.
18. HIDROESPOL E.P
19. Infraestructuras Pesqueras del Ecuador Empresa Pública - IPEEP
20. Transportes Navieros Ecuatorianos
21. Yachay EP
22. Corporación Nacional de Electricidad - CNEL EP
23. Empresa Pública de Parques Urbanos y Espacios Públicos
24. Ecuador T.V. EP
25. Fabricamos Ecuador EP
26. Unidad Nacional de Almacenamiento EP
27. Empresa Pública Técnica Vehicular
28. Empresa Eléctrica Ambato Regional Centro Norte S.A.
29. Empresa Eléctrica Riobamba S.A.
30. Empresa Eléctrica Provincial Cotopaxi S.A.
31. Empresa Eléctrica Regional Norte S.A.
32. Empresa Eléctrica Regional del Sur S.A.
33. Empresa Eléctrica Regional Centrosur C.A.
34. Empresa Eléctrica Azogues C.A.
35. Hidromira Carchi S.A.
36. Hidroagoyán S.A.
37. Empresa Pública Metropolitana de Servicios Aeroportuarios y Gestión de Zonas Francas y Regímenes Especiales
38. Autoridad Aeroportuaria de Guayaquil - Fundación de la Muy Ilustre Municipalidad de Guayaquil
39. Empresa Metropolitana de Aseo - EMASEO

40. Empresa Pública Metropolitana de Movilidad y Obras Pública
41. Empresa Pública Metropolitana de Agua Potable y Saneamiento de Quito
42. Empresa Municipal de Agua Potable y Alcantarillado de Ambato
43. Empresa Municipal de Agua Potable y Alcantarillado de Pujili -EMAPAP
44. Empresa Municipal de Agua Potable y Alcantarillado de Riobamba - EMAPAR
45. Empresa Municipal de Agua Potable y Saneamiento Básico del Cantón Pedro Moncayo, EMASA-PM.
46. Empresa Municipal de Aseo de Cuenca

SUBSECTION 4

GOODS

Title VI of this Agreement applies to all goods procured by the entities listed in Subsections 1 to 3, subject to their respective Notes and the General Notes of Subsection 7.

Notes to this Subsection

Title VI of this Agreement shall not apply to procurement of goods necessary for the implementation of research and development services or to the following goods that correspond to:

Division 12 of CPC (crude petroleum and natural gas).

Group 333 of CPC (petroleum oils)

Group 334 of CPC (petroleum gases and other gaseous hydrocarbons)

Group 341 of CPC (basic organic chemicals)

SUBSECTION 5

SERVICES EXCEPT CONSTRUCTION

Title VI of this Agreement shall apply exclusively to the services in the document MTN.GNS/W/120 which are indicated in this Subsection, procured by the entities listed in Subsections 1 to 3, subject to the respective Notes of the Subsections 1 to 3 and to General Notes of the Subsection 7:

Subject	CPC reference No.
Road Transport Services	712, 744, 87304
Maritime Transport Services	721, 745
Rail Transport Services	711, 743
Pipeline Transport	713
Internal Waterways Transport	722
Communication Services	752, 7512, 754
Maintenance and repair services	633, 6122, 886, 6112
Hotels	641, 643
Electricity distribution services and gas distribution services through Mains	691
Air Transport Services	73, 746 Except subclass: <ul style="list-style-type: none"> • 7321 Mail transportation by air, and • 7462 (Air traffic control services)
Services auxiliary to all modes of transport	741, 742, 748
Travel agencies and tour operators services	7471
Services auxiliary to insurance and pension funding	814

Rental or Leasing Services relating to other machinery and equipment without operator only	83106, 83107, 83108, 83109
Rental or Leasing Services relating to personal and household goods	83202, 83203, 83204, 83209
Computer and Related Services	841, 843, 844, 845, 849
Book-keeping services	8622
Taxation Services	863
Market research services	86401
Services related to management consulting	866 Except subclass 86602 Arbitration and conciliation services
Integrated engineering services	8673 after 15 years
Advertising services	871 after 10 years
Building-cleaning services and real estate services on a fee or contract basis	874, 822
Services incidental to agriculture, hunting and forestry; services incidental to fishing; services incidental to mining; Services incidental to manufacturing, except manufacturing of metallic products such as machinery and equipment	881, 882, 883, 884
Packaging services - Printing and Publishing services	876, 88442
Other business services	8790 (except 87901, 87902)
Veterinary services	932
Environmental services: Cleaning services of exhaust gases; noise abatement services; nature and landscape protection services; other environmental protection services n.e.c	9404, 9405, 9406, 9409

SUBSECTION 6

CONSTRUCTION SERVICES

Construction services

Title VI of this Agreement applies to all construction services procured by the entities listed in Subsections 1 to 3, included in Division 51 of CPC, subject to the Notes to the respective Subsections, the General Notes of Subsection 7, and the notes to this Subsection.

List from Division 51, CPCs			
Group	Class	Sub-class	Headline
SECTION 5			
CONSTRUCTION WORKS AND CONSTRUCTIONS; LAND			
DIVISION 51			CONSTRUCTION WORKS
511			Pre-erection work at construction sites
	5111	51110	Site investigation work
	5112	51120	Demolition work
	5113	51130	Site formation and clearance work
	5114	51140	Excavating and earthmoving work
	5115	51150	Site preparation work for mining (except for extraction of oil and gas, which is classified under F042)
	5116	51160	Scaffolding work
512			Construction work for buildings
	5121	51210	For one- and two-dwelling buildings
	5122	51220	For multi-dwelling buildings
	5123	51230	For warehouses and industrial buildings
	5124	51240	For commercial buildings
	5125	51250	For public entertainment buildings
	5126	51260	For hotel, restaurant and similar buildings

	5127	51270	For educational buildings
	5128	51280	For health buildings
	5129	51290	For other buildings
513			Construction work for civil engineering
	5131	51310	For highways (except elevated highways), street, roads, railways and airfield runways
	5132	51320	For bridges, elevated highways, tunnels and subways
	5133	51330	For waterways, harbours, dams and other water works
	5134	51340	For long distance pipelines, communication and power lines (cables)
	5135	51350	For local pipelines and cables, ancillary works
	5136	51360	For constructions for mining
	5137	51370	For sport and recreation constructions
	5138	51380	Dredging services
	5139	51390	For engineering works n.e.c.
514	5140	51400	Assembly and erection of prefabricated constructions
515			Special trade construction work
	5151	51510	Foundation work including pile driving
	5152	51520	Water-well drilling
	5153	51530	Roofing and water proofing
	5154	51540	Concrete work
	5155	51550	Steel bending and erection, including welding
	5156	51560	Masonry work
	5159	51590	Other special trade construction work
516			Installation work
	5161	51610	Heating, ventilation and air conditioning work
	5162	51620	Water plumbing and drain laying work

	5163	51630	Gas fitting construction work
	5164		Electrical work
		51641	Electrical wiring work
		51642	Fire alarm construction work
		51643	Burglar alarm system construction work
		51644	Antenna construction work
		51649	Other electrical construction work
	5165	51650	Insulation work (electrical wiring, water, heat, sound)
	5166	51660	Fencing and railing construction work
	5169		Other installation work
		51691	Lift and escalator construction work
		51699	Other installation work
517			Building completion and finishing work
	5171	51710	Glazing work and window glass installation work
	5172	51720	Plastering work
	5173	51730	Painting work
	5174	51740	Floor and wall tiling work
	5175	51750	Other floor laying, wall covering and wall papering work
	5176	51760	Wood and metal joinery and carpentry work
	5177	51770	Interior fitting decoration work
	5178	51780	Ornamentation fitting work
	5179	51790	Other building completion and finishing work
518	5180	51800	Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator

Note to this subsection

1. A procuring entity of Ecuador, in a procurement of construction services for the construction, maintenance, or rehabilitation of roads and highways, may apply a condition relating to the hiring of local personnel in rural areas in order to promote employment and improve living conditions in such areas.
2. Works concessions contracts, when awarded by procuring entities of subsections 1 and 2, are subject to the national treatment principle established in Article 175, paragraphs 1 and 2 of this Agreement and to Articles 173, 174, 179, 190 and 294 of this Agreement.

SUBSECTION 7

GENERAL NOTES

1. TITLE VI OF THIS AGREEMENT DOES NOT APPLY TO:

- a) Procurements of goods and services in the defence and public security sector made by the Fuerzas Armadas, the Policía Nacional or the Secretaría Nacional de Inteligencia, and that are strategic for national defence and public security;
- b) Public procurement programmes and procedures reserved for small, medium-sized and micro enterprises (SMEs), and the Actores de la Economía Popular y Solidaria (AEPYS) (Popular and Solidarity Economy Stakeholders), provided these meet the same size criteria as required of SMEs to be considered as such;
- c) The procurement of goods for food assistance programmes;
- d) Procurements by all public sector institutions located in the Galápagos and all procurements that affect that particular region;
- e) The procurement of goods, services and construction services purchased or procured by the missions of the foreign service of the Republic of Ecuador for their operation;
- f) Procurements made by one Ecuadorian entity from another Ecuadorian entity.

2. TECHNOLOGICAL UNBUNDLING⁽²⁾:

For the period of five years following the entry into force of this Agreement, procuring entities listed under subsections 1, 2 and 3 may subject government procurement to mandatory requirements for the incorporation of domestic content pursuant to the study of technological unbundling carried out on the basis of the methodology defined by the Servicio Nacional de Contratación Pública (SERCOP) of Ecuador. These requirements shall take the form of objective and clearly defined conditions for the participation in the tendering procedures for the award of the procurement.

Procurement entities shall indicate the existence of domestic content conditions in their notice of intended procurement and specify them in detail in the contract documents.

Such conditions shall only cover the procurement procedures of goods and construction services and shall not exceed 40 per cent of the full contract value.

3. THRESHOLD CALCULATION FORMULA

The threshold shall be adjusted at two-year intervals with each adjustment taking effect on January 1, beginning 1 January 2018.

The calculation of the values of thresholds shall be based on the average of the daily values of the SDR to US Dollar exchange rate over the 24 months terminating on the last day of August

² Technological Unbundling according the definition contained in Article 6, paragraph 10 of the *Ley Orgánica del Sistema Nacional de Contratación Pública* (Organic Law for the National Public Procurement System).

preceding the revision, with effect from 1 January. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest thousand dollars. This methodology can be modified by the EU Party and Ecuador within the Trade Committee meeting as described in Article 12 paragraph 4 of this Agreement.

4. ECUADORIAN AUTHORITIES FOR THE PURPOSES OF ARTICLE 190 OF THIS AGREEMENT

In the case of Ecuador, the Tribunal Contencioso Administrativo, the Corte Nacional de Justicia and the Servicio Nacional de Contratación Pública (SERCOP) are impartial authorities for the purposes of Article 190 paragraph 6 of this Agreement. The Servicio Nacional de Contratación Pública is an autonomous body that has the authority to provide for the interim measures referred to Article 190, subparagraph 7(a) of this Agreement in procurement procedures and award of contracts exclusively in any procurement procedure subject to the Ley Orgánica del Sistema Nacional de Contratación Pública (Organic Law on the National Public Procurement System).¹