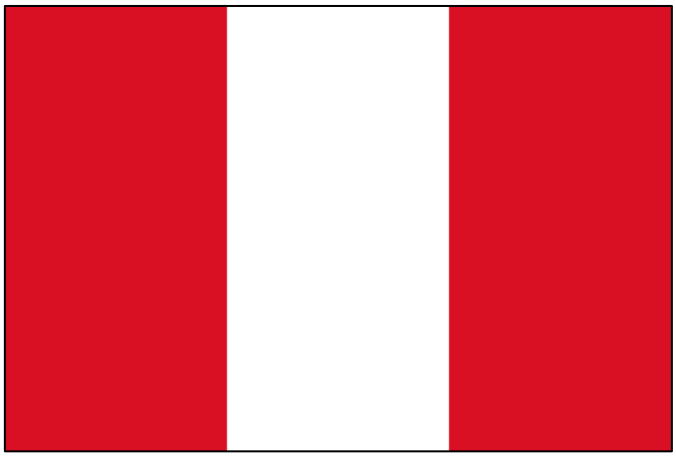
# PERU



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# COUNCIL DECISION of

# 31 May 2012

# on the signing, on behalf of the Union, and provisional application of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part (2012/735/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, Article 100(2) and the first subparagraph of Article 207(4), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 19 January 2009, the Council authorised the Commission to negotiate a multiparty trade agreement on behalf of the European Union and its Member States with the Member countries of the Andean Community which shared the aim of reaching an ambitious, comprehensive and balanced trade agreement.

(2) Those negotiations have been concluded and the Trade Agreement between the European Union its Member States, of the one part, and Colombia and Peru, of the other part (hereinafter referred to as 'the Agreement') was initialled on 23 March 2011.

(3) Article 330(3) of the Agreement provides for its provisional application.

(4) The Agreement should be signed on behalf of the Union and applied on a provisional basis, pending the completion of the procedures for its conclusion.

(5) The Agreement does not affect the rights of investors of the Member States to benefit from any more favourable treatment provided for in any agreement relating to investment to which a Member State and a signatory Andean country are Parties.

(6) The provisional application provided for in this Decision does not prejudge the allocation of competences between the Union and its Member States in accordance with the Treaties.

(7) Pursuant to Article 218(7) of the Treaty, it is appropriate for the Council to authorise the Commission to approve certain limited modifications of the Agreement concerning geographical indications to be adopted by the Trade

Committee, as proposed by the Subcommittee on Intellectual Property pursuant to Article 209(2) of the Agreement.

(8) It is appropriate to set out the relevant procedures for the protection of those geographical indications which are given protection pursuant to the Agreement.

(9) The Agreement should not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals,

HAS ADOPTED THIS DECISION:

*Article 1*

The signing of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, is hereby authorised on behalf of the Union, subject to the conclusion of the said Agreement. The text of the Agreement is attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

*Article 3*

1. The Agreement, with the exception of Articles 2, 202(1), 291 and 292 thereof, shall be applied on a provisional basis by the Union as provided for in Article 330(3) thereof, pending the completion of the procedures for its conclusion.

2. In order to determine the date of provisional application of the Agreement, the Council shall fix the date by which the notification referred to in Article 330(3) thereof is to be sent to Colombia and Peru. That notification shall include references to those provisions which are not to be provisionally applied.

3. The date from which the Agreement will be provisionally applied shall be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

*Article 4*

For the purposes of Article 209(2) of the Agreement, modifications of the Agreement concerning geographical indications to be adopted by the Trade Committee, as proposed by the Subcommittee on Intellectual Property, shall be approved by the Commission on behalf of the Union. Where interested parties cannot reach agreement following objections relating to a geographical indication, the Commission shall adopt such a position on the basis of the procedure laid down in

Article 15(2) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ([1]).

*Article 5*

1. A name protected under Appendix 1 of Annex XIII (Lists of geographical indications) to the Agreement may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirits which comply with the corresponding specification.

2. The Member States and the institutions of the Union shall enforce the protection provided for in Article 210 of the Agreement, including at the request of an interested party.

*Article 6*

The applicable provision for the purposes of adopting the necessary implementing rules for the application of the rules contained in Appendix 2A and Appendix 5 of Annex II concerning the Definition of the concept of 'originating products' and methods of administrative cooperation, and Appendix 1 of Annex I concerning the Elimination of customs duties of the Agreement is Article 247a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([2]).

*Article 7*

The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.

*Article 8*

This Decision shall enter into force on the day of its adoption. Done at Brussels, 31 May 2012.

*For the Council*
*The President*
P. OLSEN DYHR

(1) OJ L 93, 31.3.2006, p. 12.

(2) OJ L 302, 19.10.1992, p. 1.

# TRADE AGREEMENT

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

CONSIDERING the importance of the historical and cultural links and the special links of friendship and cooperation between the European Union and its Member States and the signatory Andean Countries, and their wish to promote the economic integration between the Parties;

DETERMINED to strengthen those links by building on the existing mechanisms that govern relations between the European Union and its Member States and the signatory Andean Countries;

REAFFIRMING their commitment to the United Nations Charter and the Universal Declaration of Human Rights;

CONTRIBUTING to the harmonious development and expansion of world and regional trade, and offering a catalyst for international cooperation;

DESIRING to promote comprehensive economic development with the objective of reducing poverty and creating new employment opportunities and improved working conditions, as well as raising living standards in their respective territories by liberalising and expanding trade and investment between their territories;

COMMITTED to implementing this Agreement in accordance with the objective of sustainable development, including, the promotion of economic progress, the respect for labour rights and the protection of the environment, in accordance with the international commitments adopted by the Parties;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the 'WTO Agreement');

DETERMINED to eliminate distortions to their reciprocal trade; and to prevent the creation of unnecessary obstacles to trade;

DETERMINED to establish clear and mutually advantageous rules governing their trade and to foster trade and investment between them, and to promote a regular dialogue among them on these issues;

DESIRING to promote the competitiveness of their companies in international markets by providing them with a predictable legal framework for their trade and investment relations;

CONSIDERING the difference in economic and social development between the signatory Andean Countries and the European Union and its Member States;

AFFIRMING their rights to use, to the greatest extent, the flexibilities provided for in the multilateral framework for the protection of public interest;

RECOGNISING that the signatory Andean Countries are members of the Andean Community, and that the Decision 598 of the Andean Community requires that when its Member Countries negotiate trade agreements with third countries, the Andean legal system is preserved in the reciprocal relations between the Andean Community Member Countries;

RECOGNISING the importance of the respective regional integration processes of the European Union, and of the signatory Andean Countries within the framework of the Andean Community,

HAVE AGREED AS FOLLOWS:

(...)

## Article 67

## Mutual Assistance

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

## ANNEX V

## MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

*Article 1*
*Definitions*

For the purposes of this Annex:

— ‘applicant authority’ means any competent administrative authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Annex;

— ‘customs legislation’ means any law, rule or any other legal instrument applicable in the territory of a Party, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;

— ‘operation in breach of customs legislation’ means any violation or attempted violation of the customs legislation of any Party;

— ‘personal data’ means any information relating to an identified or identifiable individual and may mean, if the legislation of the Party so provides, any information relating to an identified or identifiable legal person;

— ‘requested authority’ means any competent administrative authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Annex.

*Article 2*
*Scope of Application*

1. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions set out in this Annex, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.

2. Assistance in customs matters, as provided for in this Annex, shall apply to any administrative authority of the Parties which is competent for the application of this Annex. This shall not prejudice the rules governing mutual assistance in criminal matters, nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by the said authority.

3. Assistance to recover duties, taxes or fines is not covered by this Annex.

*Article 3*
*Assistance on Request*

1. Upon request of an applicant authority, the requested authority shall provide it with all relevant information that may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.

2. Upon request of an applicant authority, the requested authority shall inform it as to whether:

(a) goods exported from the territory of a Party have been properly imported into the territory of another Party, specifying, where appropriate, the customs procedure applied to the goods;
(b) goods imported into the territory of a Party have been properly exported from the territory of another Party, specifying, where appropriate, the customs procedure applied to the goods.

3. Upon request of an applicant authority, a requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:

(a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
(b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;
(c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation;
(d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

*Article 4*
*Spontaneous Assistance*

The Parties shall assist each other, at their own initiative and in accordance with their laws, rules and other legal instruments, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

(a) activities which are or appear to be operations in breach of customs legislation and which may be of interest to another Party;
(b) new means or methods employed in carrying out operations in breach of customs legislation;
(c) goods known to be subject to operations in breach of customs legislation;
(d) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
(e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

*Article 5*
*Delivery and Notification*

1. Upon request of an applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order to deliver any document or to notify any decision emanating from the applicant authority and falling within the scope of application of this Annex, to an addressee residing or established in the territory of the requested authority.

2. Requests for delivery of documents or notification of decisions shall be made in writing either in Spanish or in English, whichever is acceptable to the requested authority.

*Article 6*
*Form and Substance of Requests for Assistance*

1. Requests pursuant to this Annex shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required by the urgency of the situation, oral requests may be accepted, but shall be immediately confirmed in writing.

2. Requests pursuant to paragraph 1 shall include the following information:

(a) the applicant authority;
(b) the measure requested;
(c) the object of, and the reason for, the request;
(d) the laws, rules and other legal instruments involved;
(e) indications as accurate and comprehensive as possible on the natural or legal persons who are the target of the investigations; and
(f) a summary of the relevant facts and of the enquiries already carried out.

3. Requests shall be submitted to a signatory Andean Country in either Spanish or English, and in the case of the EU Party, in whichever of these is acceptable to the requested authority.

4. If a request does not meet the requirements set out in paragraphs 2 and 3, its correction or completion may be requested; in the meantime precautionary measures may be ordered, according to the laws, rules and legal instruments of the Party concerned.

*Article 7*
*Execution of Requests*

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the laws, rules and other legal instruments of the requested Party.

3. Duly authorised officials of a Party may, with the agreement of the requested Party and subject to the conditions, laws, rules and other legal instruments laid down by the latter, be present at the offices of the requested authority or any other concerned authority in accordance with paragraph 1, in order to obtain relevant information in the context of an investigation aimed at establishing a breach or potential breach of customs legislation.

4. Duly authorised officials of a Party involved may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the territory of the latter.

*Article 8*
*Form in Which Information Is to Be Communicated*

1. A requested authority shall communicate results of requests for assistance to the applicant authority in written form, together with relevant documents, certified copies, reports and the like.

2. The information referred to in paragraph 1 may be in computerised form.

3. The documents provided under this Annex will not need further certification, authentication or other type of solemnity other than that provided by the competent administrative authority, and shall be held to be authentic.

*Article 9*
*Exceptions to the Obligation to Provide Assistance*

1. Assistance may be refused or may be subject to certain conditions or requirements being satisfied, where a Party is of the opinion that assistance under this Annex would:

(a) be likely to prejudice the sovereignty of a signatory Andean Country or that of an European Union Member State which has been requested to provide assistance under this Annex;
(b) be likely to prejudice public order, security or other essential interests, in particular in the cases referred to under Article 10, paragraph 2;
(c) violate an industrial, commercial or professional secret; or
(d) be unconstitutional or contrary to its law, rules or other legal instruments.

2. Assistance may be postponed by the requested authority on the grounds that it may interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons therefor must be communicated to the applicant authority without delay.

*Article 10*
*Information Exchange and Confidentiality*

1. Any information communicated in whatever form pursuant to this Annex shall be of a confidential or restricted nature, in accordance with the rules applicable in each of the Parties. Such information shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it and the corresponding provisions applying to the authorities of the EU Party.

2. Personal data may be exchanged only where the Party which may receive them undertakes to protect such data in at least an equivalent way to that applicable in that particular case in the Party that may supply them.

3. A Party may refuse to provide the information requested by another Party where the latter has not acted in conformity with the provisions of paragraph 2.

4. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Annex, is considered to be for the purposes of this Annex. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Annex. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

5. Information obtained pursuant to this Annex shall be used solely for the purposes of the application of the latter. Where a Party wishes to use such information for other purposes, such Party shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

*Article 11*
*Experts and Witnesses*

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered under this Annex, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

*Article 12*
*Assistance Expenses*

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Annex, except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.

*Article 13*
*Implementation*

1. The implementation of this Annex shall be entrusted on the one hand to the customs or other competent authority designated by the relevant signatory Andean Country and on the other hand to the competent services of the European Commission and the customs authorities of the European Union Member States, as appropriate.

2. The authorities referred to in paragraph 1 shall decide on all practical measures and arrangements necessary for the application of this Annex, taking into consideration the rules in force in particular in the field of data protection. These authorities may recommend to the competent bodies the development of complementary instruments for the application of this Annex.

3. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Annex.

*Article 14*
*Other Agreements*

1. Taking into account the respective competencies of the European Union and of the European Union Member States, the provisions of this Annex shall:

(a) not affect the obligations of the Parties under any other international agreement or convention;
(b) be deemed complementary to agreements on mutual assistance which have been, or may be, concluded between an individual European Union Member State and a signatory Andean country; and
(c) not affect European Union provisions governing the communication between the competent services of the European Commission and the customs authorities of the European Union Member States of any information obtained under this Annex which could be of interest to the European Union.

2. Notwithstanding the provisions of paragraph 1, the provisions of this Annex shall prevail over the provisions of any bilateral agreement on mutual assistance which has been or may be concluded between an European Union Member State and a signatory Andean Country insofar as the provisions of the latter are incompatible with those of this Annex.

3. The Parties shall consult to resolve any question relating to the applicability of this Annex, within the framework of the Subcommittee on Customs, Trade Facilitation and Rules of Origin established in Article 68 of this Agreement.