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Draft 8 May 2006

Chapter Thirteen

Competition Policy, Designated Monopolies, and State Enterprises

Article 13.1: Objectives

Recognizing that the conduct subject to this Chapter has the potential to restrict bilateral trade and investment, the Parties believe that proscribing such conduct, implementing economically sound competition policies, and cooperating on matters covered by this Chapter will help secure the benefits of this Agreement.

Article 13.2: Competition Law and Anticompetitive Business Conduct

1. Each Party shall adopt or maintain national competition laws that proscribe anticompetitive business conduct and promote economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.
2. Each Party shall maintain an authority responsible for the enforcement of its national competition laws. The enforcement policy of each Party's central government competition authorities is not to discriminate on the basis of the nationality of the subjects of their proceedings.
3. Each Party shall ensure that:
 - (a) before it imposes a sanction or remedy against any person for violating its competition law, it affords the person the right to be heard and to present evidence, except that it may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy; and
 - (b) a court or other independent tribunal established under that Party's laws imposes or, at the person's request, reviews any such sanction or remedy.
4. Each Party other than the United States may implement its obligations under this Article through Andean Community competition laws or an Andean Community enforcement authority.

Article 13.3: Cooperation

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1. The Parties agree to cooperate in the area of competition policy. The Parties recognize the importance of cooperation and coordination between their respective authorities to further effective competition law enforcement in the free trade area.
2. Accordingly, the Parties shall cooperate on issues of competition law enforcement, including notification of cases that affect the important interests of another Party, consultation, and exchange of information relating to the enforcement of each Party's competition laws and policies.

Article 13.4: Working Group

The Parties shall establish a working group comprising representatives of each Party. The working group shall endeavor to promote greater understanding, communication, and cooperation between the Parties with respect to matters covered by this Chapter. The working group shall report on the status of its efforts to the Commission within three years of entry into force of this Agreement and may make any appropriate recommendations for future action that may further promote the achievement of the objectives of this Article.

Article 13.5: Designated Monopolies

1. Recognizing that designated monopolies should not operate in a manner that creates obstacles to trade and investment, each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates or has designated:
 - (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;
 - (b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d);
 - (c) provides non-discriminatory treatment to covered investments, to goods of another Party, and to service suppliers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and

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- (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.
2. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly.
 3. This Article does not apply to procurement, as defined in Article 1.3 (Definitions of General Application).

Article 13.6: State Enterprises

1. The Parties recognize that state enterprises should not operate in a manner that creates obstacles to trade and investment. In that light, each Party shall ensure that any state enterprise that it establishes or maintains:
 - (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges; and
 - (b) accords non-discriminatory treatment in the sale of its goods or services to covered investments.
2. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise.

Article 13.7: Differences in Pricing

The charging of different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions, is not in itself inconsistent with Articles 13.5 and 13.6.

Article 13.8: Transparency and Information Requests

1. The Parties recognize the value of transparency of government competition policies.

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2. On request, each Party shall make available to another Party public information concerning its:
- (a) competition law enforcement activities;
 - (b) state enterprises and designated monopolies, public or private, at any level of government; and
 - (c) export associations registered or certified as such to the central government, including any conditions the Party imposes on them.

In a request under subparagraph (b), a Party shall indicate the entities or localities involved, specify the particular goods or services and markets concerned, and include indicia of practices that may restrict trade or investment between the Parties.

In a request under subparagraph (c), a Party shall specify the particular goods or services concerned.

3. On request, each Party shall make available to the other Party public information concerning exemptions provided under its competition laws. The requesting Party shall specify the particular goods or services and markets of interest and include indicia that the exemption may restrict trade or investment between the Parties.

Article 13.9: Consultations

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of another Party, enter into consultations. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the other Party.

Article 13.10: Dispute Settlement

No Party may have recourse to dispute settlement under this Agreement for any matter arising under Article 13.2, 13.3, 13.4, or 13.9.

Article 13.11: Definitions

For purposes of this Chapter:

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a **delegation** includes a legislative grant, and a government order, directive, or other act, transferring to the monopoly or state enterprise, or authorizing the exercise by the monopoly or state enterprise of, governmental authority;

designate means to establish, designate, or authorize a monopoly or to expand the scope of a monopoly to cover an additional good or service, whether formally or in effect;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the central government of a Party or by another such monopoly;

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

market means the geographic and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

non-discriminatory treatment means the better of national treatment and most-favored- nation treatment, as set out in the relevant provisions of this Agreement.