EXPLANATORY MEMORANDUM TO THE EUROPEAN UNION (DEFINITION OF TREATIES) (COLOMBIA AND PERU TRADE AGREEMENT) ORDER 2014

2014 No. 266

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument is intended to give effect under domestic law to the Trade Agreement (FTA) between the European Union (EU) and its Member States, of the one part, and the republics of Colombia and Peru, of the other part ("the Agreement"). The Agreement is designed to be a World Trade Organisation (WTO) compatible Agreement. As some elements of the Agreement fall under the exclusive competence of Member States, it requires ratification by all Member States before it can fully enter into force.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Agreement will need to be designated as an EU Treaty by Order in Council in accordance with section 1 (3) of the European Communities Act 1972 in order to have legal effect in the UK but will not require any new legislation to be introduced by the United Kingdom. No other implementation is required for the UK.

4.2 The Order will be intended to give effect under domestic law to the Agreement on the grounds that it is a mixed competence agreement which is binding on Member States under Article 218(5) Treaty on the Functioning of the European Union (TFEU) and to which the UK must give effect.

4.3 The Agreement has been published in full in a Command Paper.

4.4 Procedurally, the Commission has already presented a proposal for a Decision by the Council and the representatives of the Governments of the Member States, which when adopted, will complete the decision-making process for the conclusion and ratification of the Agreement on behalf of the EU and its Member States.

4.5 Signature of the FTA is not subject to any procedure in the European Parliament (Article 218(5) TFEU). The EU, Colombia and Peru signed the Agreement on 26 June 2012. Conclusion of the FTA is subject to the European Parliament's consent under Article 218(6)(v) TFEU.

4.6 On 11 December 2012 the European Parliament approved the Agreement. The necessary procedures for the EU to apply the agreement provisionally have been completed.

4.7 Unanimously approving the Agreement in its Congress on 12 December 2012, Peru completed the necessary internal procedures to provisionally apply the agreement, and it has been applied provisionally with Peru since 1 March 2013. The Colombian Senate approved the agreement on 13 December 2012, and the Chamber of Representatives approved the FTA on 4 June 2013. Colombia has notified the Commission that it has completed its internal procedures and the FTA is due to be applied provisionally with Colombia on 1 August 2013.

4.8 The decision will only be adopted by the Council and the Representatives of Governments of the Member States once all Member States' parliamentary procedures for ratification of the Agreement are complete. Only then will the Agreement enter fully into force.

5. Territorial Extent and Application

5.1 The instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Trade and Investment at the Department for Business, Innovation and Skills has made the following statement regarding Human Rights:

"In my view the provisions of the European Union (Definition of Treaties) (Colombia and Peru Trade Agreement) Order 2014 are compatible with the European Convention on Human Rights"

[Stephen Green]
Minister of State for Trade and Investment

7. Policy Background

7.1 The Agreement presented in this instrument represents the outcome of the FTA negotiations undertaken by the European Commission (acting on behalf of the European Union and its Member States) with Colombia and Peru.

7.2 On 23 April 2007 the European Council authorised the European Commission to open negotiations with the Andean Community (Colombia, Bolivia, Peru and Ecuador) for a regional Association Agreement. Negotiations between the EU and the Andean Community for a region-to-region Association Agreement were suspended in June 2008. On 19 January 2009, the Council authorised the Commission to negotiate a multiparty trade agreement. Thus in January 2009, the trade negotiations between the EU and three remaining Andean countries – Colombia, Peru and Ecuador - restarted, aiming at a Multiparty Trade Agreement. Ecuador suspended its participation in negotiations in July 2009. Trade negotiations between the EU and Colombia and Peru were successfully concluded in 2011. The official text of the Trade Agreement was initialed between the European Commission, Colombia and Peru on 13 April 2011. The Agreement was signed by the Colombian Minister for Trade, the Peruvian Minister for Foreign Trade, the European Commission and Danish Presidency on 26 June 2012. The European Parliament then gave its consent to the Agreement on 11 December 2012.

7.3 The Agreement was designated a Multi Party Trade agreement between the EU and its Member States and the Andean countries. It includes sections on the following areas: Trade in Goods, Trade Remedies, Technical Barriers to Trade, Trade in Services, Establishment and E-Commerce, Government Procurement, Intellectual Property Rights, Competition, Transparency, Trade and Sustainable Development and Dispute Settlement.

7.4 Key benefits of the Agreement:

a). The Sustainability Impact Assessment prepared for the European Commission by the Centre for Economic Policy Research and others did not publish estimates of the impact on the UK or any other Member States individually. However, if it is assumed that the UK will receive a pro rata share of the EU's benefits, based on the UK's share of GDP in the EU27 GDP, approximately averaging 14% over 2004-2011, the long term impact on the UK is estimated to be £374 million per year (2007 prices) and the welfare (change in GDP) impact on the UK summed over ten years would amount to some £2,241 million[1] (2007 prices).

b). The Agreement will open up market opportunities for a number of key export industries of the EU which will benefit from the removal of tariffs. For example it is worth over €33 million (£28.4 million)[2] of tariff reductions for the automotive and car parts sector, around €16 million (£13.8 million) for chemicals and over €60 million (£51.7 million) for textiles. Other noticeable tariff reductions will be on wines and spirits and pharmaceutical and telecommunication products. Savings on import duties alone will be worth some half a billion Euros at the end of transition periods.

c). The EU will open its market to exporters from Colombia and Peru by committing to an immediate liberalisation in industrial and fisheries products as

[1]Assumed exchange rate of £1= =€1.16 (2011 annual average €/£ exchange rate. Source: Bank of England)

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well as substantial tariff concessions in agriculture. This is expected to have a direct impact on growth and jobs in these countries and contribute to the sustained move up the value chain of their economies.

d). The Agreement establishes better conditions for trade through a set of disciplines which go beyond those agreed in the multilateral framework, and will promote internationally agreed best practices while securing a transparent, non-discriminatory and predictable environment for operators and investors.

7.5 Economic Benefits to the EU

a) Over the course of its implementation, the Agreement will fully relieve EU exporters of industrial and fisheries products to Colombia and Peru from paying customs duties. At the latest 10 years after its entry into force, EU exporters of these products will be saving at least €250 million (£215.5 million) annually in tariffs to these two countries. After a gradual liberalisation over a slightly longer period (up to 17 years) an additional €22 million (£19 million) will be saved annually on exports of agricultural and processed agricultural products, bringing the total benefit for the EU export sector at the end of the transition period to more than €270 million (£232 million) a year.

b) This means concrete gains for specific sectors that are already exporting to the region as well as new opportunities for those who are still out of those markets. For instance, exports in the automotive and car parts sector will be relieved of over €33 million (£28.4 million) in tariffs. EU chemicals producers that export to Colombia and Peru will save more than €16 million (£13.8 million) on duties each year. The textiles industry will see significant savings of over €60 million (£51.7 million) annually. The telecoms equipment industry alone will save €18 million (£15.5 million) annually, not to mention the basis it creates to support the development of an EU telecommunications services industry in the region. Finally, pharmaceuticals products will be relieved of the current €16 million (£13.8 million) in duties that are paid annually.

7.6 UK – Andean countries bilateral trade

a) The UK economic interests in this agreement are modest, but trade and investment between the Andean countries and the UK is increasing. Colombia is the UK's fifth largest market in Latin America, while the UK is a leading foreign investor in Colombia. In 2011 the UK exported goods valued at £315m, with the largest volumes in industrial machinery, vehicles, beverages, pharmaceuticals and precision instruments. Trade in services reached £383mn, the first time that it has formed the majority of our exports. The overall figure (£698m) means that exports grew by more than 60% for two years in a row. Imports to the UK totalled £982m, primarily consisting of fruit, coal, flowers and coffee.

b) Total UK exports of goods to Colombia during 2012 increased by 3%.

c) UK service exports to Colombia have increased significantly since 2009 by almost 180% to £383m in 2011. UK service imports, on the other hand have remained fairly stable at £59m in 2011, merely rising by 11% since 2009.

d) The value of UK FDI in Colombia has fluctuated. At the end of 2011 the stock of UK investment in Colombia was valued at £ 450 million, compared to £ 2600 million at the end of 2010.

e) The value of Foreign Direct Investment in Peru has also tended to fluctuate from year to year. At the end of 2011, the stock of UK investment in Peru was £180 million, 24% higher than in 2010, but 25% below its peak in 2008.

f) UK exports to Peru – though small – are increasing. In 2011 UK goods and service exports amounted to £ 288 million, which included £137 million of service exports. Our imports (goods and services) from Peru were around £ 330 million.

g) UK exports were relatively evenly divided between goods and services. Our main exports of goods are machinery, vehicles and beverages. Meanwhile, Peru's main goods exports are tin, fruit and vegetables, coffee and residues from the food industries.

h) Total UK exports of goods to Peru increased by 12% in 2012

7.7 The agreement annexes include information on tariff elimination schedules, details of the elimination of customs duties, details of special provisions on administrative cooperation, details of agricultural safeguard measures and details of sanitary and phytosanitary measures. It is a progressive agreement as the provisions are phased in over time. Whilst the majority of the benefits from tariff free access will occur ten years after the agreement comes into force, full liberalisation will be achieved over a somewhat longer period of seventeen years.

7.8 The text also includes a far-reaching agreement on the protection of human rights and the rule of law as well as commitments to effectively implement international conventions on labour rights and environmental protection. Civil society organisations will be systematically involved to monitor the implementation of these commitments.

7.9 The UK Government is committed to implementing this agreement between the EU and Andean countries, which is designed to open markets to business, services and investment according to World Trade Organisation (WTO) law. The agreement is consistent with the UK's objectives in trade policy (free, fair and open markets) and with relevant wider policy goals. The UK government supports this agreement, which is well balanced and ambitious with substantial gains for all parties on market access and rules. The UK believes the Agreement represents a balanced outcome of negotiations and one that is fully consistent with the UK's policy on FTAs and beneficial for the UK overall.

7.10 Consolidation – not applicable

8. Consultation outcome

8.1 The Parliamentary Scrutiny and Select Committees have been consulted on the proposals relating to signature, provisional application and conclusion of this Agreement.

8.2 Throughout the negotiations for the FTA, BIS has actively engaged and consulted with business, across government and has represented agreed UK policy to the European Commission.

8.3 UK Government Departments which have been consulted on this substance of this Explanatory Memorandum include the Foreign and Commonwealth Office, HM Treasury, Department for Transport, Department for Environment Food and Rural Affairs and the Home Office. UK representatives based in Colombia and Peru and in Brussels have also been consulted.

9. Guidance

9.1 This Agreement will not lead to any new regulatory measures and therefore there is no need for new guidance.

10. Impact

10.1 The financial implications of this FTA have been considered by economists within BIS and the assessment is that there is unlikely to be significant impact on business and the public purse.

10.2 There are no monetised costs. The Commission's 2012 Sustainability Impact Assessment estimates a reduction of approx €247m in EU's tariff revenue due to lower tariffs agreed on Colombian & Peruvian imports. Costs faced by UK are expected to be minimal as UK trade with Andean countries represents less than 1% of total UK trade. Some costs relating to adjustment costs to firms are outweighed by the overall benefits of competition. Minimal costs to firms, enforcers, customs & government officials of reading & understanding the text.

10.3 An impact assessment has been prepared on the EU - Colombia and Peru FTA and this is attached.

11. Regulating Small Business

11.1 The Agreement will not lead to any new regulatory measures and there is no regulatory impact on small business.

12. Monitoring and Review

12.1 The FTA incorporates clauses in the Agreement which state that there are mechanisms by which to monitor and review the impact of the different chapters following entry into force of the Agreement.

13. Contact

13.1 Any queries regarding the instrument can be directed to Stephen Booth in the Trade Policy Unit at the Department for Business, Innovation and Skills. His contact details are as follows:

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