

RECORD OF UNDERSTANDING
RELATING TO THE FREE TRADE AGREEMENT
BETWEEN
THE REPUBLIC OF COLOMBIA
AND
THE EFTA STATES

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**The Parties hereby confirm the following common understandings,
and confirm that these understandings constitute an integral part of the
Agreement. For greater certainty:**

Ad subparagraph (p)(i) of Article 4.2 (Definitions)

A necessary condition for a juridical person to qualify as “juridical person of a Party” under subparagraph (p)(i) of Article 4.2 (Definitions) is to be constituted or otherwise organised under the law of that Party. Juridical persons that do not fulfil this condition are not covered by the definition of subparagraph (p)(i), even if they meet other criteria of that paragraph, *e.g.* the subsidiary in a non-party of a company established in a Party is not covered by the definition of subparagraph (p)(i).

Another necessary condition required under subparagraph (p)(i) is to “be engaged in substantial business operations”. A juridical person may fulfil this condition by performing business operations in the territory of any Party. A juridical person may also fulfil this condition by performing business operations in the territory of a non-party Member of the WTO provided that that juridical person is owned or controlled by persons of that Party which meet the conditions of subparagraph (i)(A), *i.e.* which are constituted or otherwise organised under the law of that other Party and are engaged in substantive business operations in the territory of any Party.

Ad Articles 4.3 (Most-Favoured-Nation Treatment) and 4.5 (National Treatment)

A Party may adopt excise or other taxes levied on cross-border services provided that such taxes are consistent with Articles 4.3 (Most-Favoured-Nation Treatment) and 4.5 (National Treatment) of Chapter 4 (Services)

Ad paragraph 4 of Article 4.7 (Domestic Regulation)

With regard to the application of the criteria outlined in sub-paragraphs (i), (ii) and (iii) of paragraph 4 of Article 4.7 (Domestic Regulation) of Chapter 4 (Services), paragraph 4 of Article 4.7 (Domestic Regulation) has the same effect as paragraphs 4 and 5 of Article VI of the GATS.

Ad paragraph 3 of Article 1 of Annex XVI

Nothing under paragraph 3 of Article 1 of the Annex on Financial Services prevents a Party to take into consideration the fact that a new financial service is supplied in major markets of WTO Members for permitting such service under Article 2 of the Annex.

Ad Article 6 of Annex XVI

Article 6 of the Annex on Financial Services covers the adoption or enforcement of non-discriminatory measures of general application taken by a central bank or monetary authority or by any other public entity in pursuit of monetary and related credit or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 4.13 (Payment and Transfers).

Without limiting the other applications or meaning of the previous paragraph, including its final sentence, the previous paragraph permits a Party to apply non-discriminatory exchange rate regulations of general application to the acquisition by its residents of financial services from cross-border financial service suppliers.

A Party may, under the provisions of Article 6 of the Financial Services Annex, prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Record of Understanding.

Done at Geneva, this 25th day of November 2008, in two originals in the English and Spanish languages. One original shall be deposited by the EFTA States with the Kingdom of Norway, who shall act as Depositary, and Colombia will have the other original.

For the Republic of Iceland

For the Republic of Colombia

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For the Principality of Liechtenstein

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For the Kingdom of Norway

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For the Swiss Confederation

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