



EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

**on the conclusion of the Trade Agreement between the European Union and Colombia
and Peru**

EXPLANATORY MEMORANDUM

1. BACKGROUND

The attached proposal constitutes the legal instrument for concluding a trade agreement between the European Union and Colombia and Peru:

- Proposal for a Council Decision concluding the trade agreement.

Negotiations between the EU and the Andean Community of Nations (hereinafter, Andean Community) for a region-to-region association agreement, including political dialogue, cooperation and trade were launched in June 2007 following a Council decision to authorise these negotiations in April of the same year. Regrettably, disagreement between Andean countries on approaches to a number of key trade issues covered under the foreseen agreement led to the suspension of talks in June 2008. Under these circumstances, the Commission presented a recommendation to the Council on 17 December 2008 with a view to modifying the existing authorisation so as to pursue negotiations of a trade agreement with those countries of the Andean Community willing to move ahead.

On 19 January 2009, the Council authorised the Commission to negotiate a multiparty trade agreement with those countries sharing our general objective of a balanced, ambitious, comprehensive and WTO-compatible agreement. The Presidents of Colombia, Ecuador and Peru confirmed their commitment to negotiate in letters to President Barroso in January 2009. Bolivia had been very critical of the new format, and had not shown any interest in participating. New negotiations for a multiparty trade agreement were therefore launched in January 2009 between the EU and Colombia, Ecuador and Peru. After 4 rounds, Ecuador suspended its participation in the talks and negotiations therefore continued with Peru and Colombia only. They were successfully concluded in May 2010 and - after a phase of legal review - the text of the trade agreement was initialled with Colombia and Peru on 23 March 2011.

As set out in the negotiating directives, the Commission reached the objectives to eliminate high tariffs, tackle technical barriers to trade, liberalise services markets, protect valuable EU geographical indications (GIs), open-up public procurement markets, include commitments on the enforcement of labour and environmental standards and offer effective and swift dispute settlement procedures. The aim to go well beyond WTO commitments and ensure a level playing field with competitors in the region such as the US is therefore achieved.

Above all, the agreement is an opportunity for the EU to provide an anchor for Colombia and Peru's reforms to integrate the global economy, increase welfare and consolidate their growth with a view to improving the living conditions of their peoples. Other Members of the Andean Community are also encouraged via an accession clause to take part in the trade agreement whenever they see fit.

The EU Member States were informed orally and in writing on the process of the negotiations with Colombia, Peru and - until it participated – Ecuador via the Trade Policy Committee of the Council. The European Parliament has also been regularly informed on developments via its Committee on International Trade (INTA). The complete text resulting from the

negotiations was circulated throughout the process to both institutions. A detailed Trade Sustainability Impact Assessment (SIA) examining the Agreement's potential economic, social and environmental effects has been conducted and published in October 2009.

2. NATURE AND SCOPE OF THE AGREEMENT

The trade agreement between the EU, Colombia and Peru establishes the conditions for EU economic operators to take full advantage of the opportunities and the emerging complementarities between our respective economies. Over the course of its implementation, the Agreement will fully relieve EU exporters of industrial and fisheries products to Peru and Colombia from paying customs duties. It satisfies art. XXIV GATT criteria (to eliminate duties and other restrictive regulations of commerce with respect to substantially all trade between the parties) i.e.: 99% of EU exports are covered (100% of our trade in industrial products in 10 years; and c.85% of agriculture after 17 years). In addition, it will allow for the dismantling of some difficult non-tariff barriers. Peru and Colombia, for their part, will benefit from substantial new access to the EU market in particular for their key agriculture exports: bananas, sugar and rum while the EU will grant 100% duty-free coverage for industrial products and fisheries of Colombian and Peruvian origin at entry into force.

On services and establishment as well as public procurement coverage, the agreement is among the most ambitious ever negotiated by the Commission. It includes substantial commitments on all key sectors (notably financial services, telecommunications, transport) for cross-border supply and establishment in particular, while the EU's concerns in terms of temporary presence of natural persons for business purposes (mode 4) have been dealt with satisfactorily. In procurement, the EU has obtained the commitment of institutions at both central and sub-central level with reasonably low thresholds.

The agreement also establishes a set of disciplines which go beyond those agreed in the multilateral framework, notably on intellectual property (e.g. 205 EU geographical indications protected, data protection conditions clarified); sustainable development (the agreement is GSP+ equivalent or above on labour and environmental issues and contains specific commitments on sustainable fisheries); competition (disciplines on monopolies and State Enterprises – transparency obligations on subsidies); technical barriers to trade (WTO+ elements on market surveillance, transparency in regulation procedures and disciplines on labelling and marking); Sanitary and Phytosanitary measures (WTO+ measures on animal welfare, regionalisation, approval of export establishments, on the spot inspections and import checks) among others. In addition, the agreement establishes a Trade Committee as well as a set of sub-committees to allow for consultations on specific trade concerns under its different titles. A key added value of the agreement is therefore to lock-in and promote – above and beyond those rules that derive from the WTO framework – openness policies and respect for internationally agreed best practices at the domestic level while securing a transparent, non-discriminatory and predictable environment for EU operators and investors in the region – in particular via the bilateral dispute settlement mechanism foreseen under the agreement.

The agreement also includes a Title on technical assistance and trade capacity building aimed at promoting competitiveness, innovation and facilitating trade and technology transfers between the parties.

All the areas covered by the trade agreement fall within the competence of the EU and, more particularly, within the scope of Articles 91, 100(2) and 207 TFEU. Therefore, the agreement

is to be concluded by the European Union pursuant to a decision of the Council based on Article 218(6) TFEU, following the European Parliament's consent.

3. PROCEDURES

The Commission has judged the results of the negotiations to be satisfactory and requests the Council:

- to conclude on behalf of the European Union, the Trade Agreement between the European Union and Colombia and Peru;
- The European Parliament will be called upon to give its consent to the conclusion of the Trade Agreement.

Proposal for a

COUNCIL DECISION

on the conclusion of the Trade Agreement between the European Union and Colombia and Peru

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 91, 100(2) and 207(4), first subparagraph, in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) On 19 January 2009 the Council authorised the Commission to negotiate a multiparty trade agreement on behalf of the European Union with the Member Countries of the Andean Community which shared the aim to reach an ambitious, comprehensive, and balanced trade agreement.
- (2) Those negotiations have been concluded and the Trade Agreement between the European Union and Colombia and Peru (hereinafter referred to as "the Agreement") was initialled on 23 March 2011.
- (3) In accordance with Council Decision No .../2011/EU of ...² the Agreement was signed on behalf of the European Union on ..., subject to its conclusion at a later date.
- (4) The Agreement should be approved.
- (5) Pursuant to Article 218(7) of the Treaty, it is appropriate for the Council to authorise the Commission to approve modifications to be adopted by the Trade Committee, as proposed by the Subcommittee on Intellectual Property on Geographical Indications pursuant to Article 209 paragraph 2 of the Agreement.
- (6) It is appropriate to set out the relevant procedures for the protection of geographical indications which are given protection pursuant to the Agreement.
- (7) 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,

¹ OJ C , , p. .

² The Agreement has been published in OJ ... together with the decision on signing.

HAS ADOPTED THIS DECISION:

Article 1

The Trade Agreement between the European Union and Colombia and Peru is hereby approved on behalf of the Union.

Article 2

The President of the Council shall designate the person(s) empowered to proceed on behalf of the European Union to give the notification referred to in Article 330 paragraph 1 of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

For the purposes of Article 209 paragraph 2 of the Agreement, modifications of the Agreement through decisions of the Trade Committee as proposed by the Subcommittee on Intellectual Property on Geographical Indications, shall be approved by the Commission on behalf of the European 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 foodstuffs³. The period referred to in Article 5(6) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁴ shall be set at one month.

Article 4

A name protected under Appendix 1 of Annex XIII (List of Geographical Indications) of the Agreement may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirits conforming to the corresponding specification.

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

Article 5

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 Co-operation, and Appendix 1 of Annex I concerning the Elimination of Customs Duties of the

³ OJ L 93, 31.3.2006, p. 12.

⁴ OJ L 184, 17.7.1999, p. 23.

Agreement is Article 247a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁵.

⁵ OJ L 302, 19.10.1992, p. 1.

Article 6

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 7

This Decision shall enter into force on the day of its adoption.

Done at Brussels, [...]

*For the Council
The President*

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A BUDGETARY
IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

1. NAME OF THE PROPOSAL:

COUNCIL DECISION on the conclusion of the Trade Agreement between the European Union and Colombia and Peru

2. BUDGET LINES:

Chapter and Article: 12 0

Amount budgeted for the end of the implementation period

3. FINANCIAL IMPACT

- Proposal has no financial implications
- Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€million to one decimal place)

Budget line	Revenue ⁶	12 month period, starting dd/mm/yyyy	[Year n]
Article ...	<i>Impact on own resources</i>		137.5
Article ...	<i>Impact on own resources</i>		

Situation following action					
	[n+1]	[n+2]	[n+3]	[n+4]	[n+5]
Article ...					

⁶ Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs

Article ...					
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4. ANTI-FRAUD MEASURES

The EU's customs legislation is designed to ensure the correct application of all EU customs measures including the tariff preferences laid down in this trade agreement, which also contains the necessary provisions on the application of preferential rules of origin and administrative cooperation (Annex II), assistance with enquiries (Annex V), and the possibility, after consultations, of temporary withdrawal of tariff preferences in the event of frauds and irregularities involving preferential treatment (Annex III).

5. OTHER REMARKS

This estimation is based on the average imports for the period 2007-2009 and represents the annual loss in revenues due to: 1/ full implementation of negotiated tariff preferences of the Trade Agreement i.e.10 years after entry into force and 2/ initial levels of conceded tariff rate quotas. During the previous years, revenue losses will be inferior also bearing in mind the likely increase in imports of products that will have duties reduced in stages and that will partly compensate the loss.