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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 April 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 173 final
Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the European Union, and provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the Accession of Ecuador

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Delegations will find attached document COM(2016) 173 final.

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Encl.: COM(2016) 173 final



Brussels, 4.4.2016  
COM(2016) 173 final

2016/0091 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the signing, on behalf of the European Union, and provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the Accession of Ecuador**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The attached proposal for a Council Decision constitutes the legal instrument for the signing and provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, on the one part, and Colombia and Peru on the other part, to take account of the Accession of Ecuador .

Following the withdrawal of Bolivia from the negotiation of an Association Agreement between the EU and the Andean Community, on 19 January 2009, the Council authorised the Commission to negotiate a trade agreement with those Andean Community countries (Bolivia, Colombia, Ecuador and Peru) which shared our general objective of a balanced, ambitious, comprehensive and WTO-compatible agreement. Subsequently, negotiations for a multiparty trade agreement were launched in January 2009 between the EU and Colombia, Ecuador and Peru. Bolivia chose not to participate in the process. After 4 rounds, Ecuador suspended its participation in the talks and negotiations continued with Peru and Colombia only.

On 26 June 2012 the EU signed a Trade Agreement with Colombia and Peru (the Trade Agreement). The Trade Agreement has been provisionally applied since 1 March 2013 for Peru and 1 August 2013 for Colombia.

Article 329 of the Trade Agreement lays down the provisions whereby other Member Countries of the Andean Community can become Parties to the Trade Agreement.

Following the request by Ecuador to restart negotiations with the Union to become a Party to the Trade Agreement, negotiations were conducted between the Union and Ecuador in 2014. The negotiations for the Protocol of Accession by Ecuador to the Trade Agreement ('the Protocol of Accession') were concluded in July 2014.

The Commission informed EU Member States orally and in writing on the process of the negotiations with 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 to both institutions.

Following the initialling of the Protocol of Accession, an interim reciprocal arrangement was necessary for the establishment of a free-trade area with Ecuador in order to avoid unnecessary trade disruption. On the EU side, Regulation (EU) No 1384/2014 of the European Parliament and of the Council of 18 December 2014 on the tariff treatment for goods originating in Ecuador provides for the maintenance of the preferential duty rates applicable to goods originating in Ecuador on 12 December 2014 as from 1 January 2015. Regulation (EU) No 1384/2014 will expire on 31 December 2016.

In accordance with Article 329(4) and footnote 89 of the Trade Agreement, the EU- Colombia - Peru Trade Committee established in the framework of the Trade Agreement approved the Protocol of Accession of Ecuador at its meeting of 8 February 2016.

## **Consistency with existing policy provisions in the policy area**

The accession of Ecuador to the existing Trade Agreement with Colombia and Peru, which is a balanced, ambitious, comprehensive and WTO-compatible agreement, reinforces the legal framework of the EU trade relations with this country and facilitates reciprocal trade and investment. It also incorporates Ecuador to the regime of joint rules and institutions established by the Trade Agreement.

Moreover, accession to the Trade Agreement will provide an anchor for Ecuador's economic reforms and efforts to integrate the global economy, increase welfare and consolidate its growth with a view to improving the living conditions of its citizens.

By means of the Protocol of Accession, the Commission reached the objectives set out in the negotiating directives, namely 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 resulting agreement goes well beyond WTO commitments and ensures a level playing field with competitors in the region.

- **Consistency with other Union policies**

The Protocol also contains a chapter on Trade and Sustainable Development that links the Trade Agreement to EU objectives in the field of labour, environment, and climate change.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for this Council decision is the Treaty on the Functioning of the European Union, in particular its Articles 91, 100(2) and 207(4), first subparagraph, in conjunction with Article 218(5), thereof.

- **Subsidiarity (for non-exclusive competence)**

The common commercial policy, in accordance with Article 3 of the TFEU, is defined as an exclusive Union competence.

- **Proportionality**

This proposal is necessary in order to implement the Union's international trade and policy objectives towards Ecuador and Latin America in general, and as reflected in several EU-CELAC summit declarations.

- **Choice of the instrument**

This proposal is in accordance with Article 218(5) TFEU, which envisages the adoption by the Council of decisions on international agreements. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS AND OTHER REMARKS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

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.

- **Regulatory fitness and simplification**

The signature of the Protocol is not subject to REFIT procedures; it does not imply any costs for the Union SMEs; and it does not raise any issues from the viewpoint of the digital environment.

- **Fundamental rights**

The proposal does not have consequences for the protection of fundamental rights in the Union.

### **4. BUDGETARY IMPLICATIONS**

Foregone duty is estimated to amount to EUR 80 million upon full implementation of the Agreement after ten years.

### **5. OTHER ELEMENTS**

- **Nature and scope of the Protocol of Accession**

The Protocol of Accession of Ecuador to the Trade Agreement between the European Union and its Member States, on the one part, and Colombia and Peru on the other part, establishes the necessary modifications to the Trade Agreement to take account of the accession of Ecuador. The Trade Agreement 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 Trade Agreement will fully relieve EU exporters of industrial and fisheries products to Ecuador from paying customs duties. It satisfies the criteria established in Article XXIV of the GATT 1994 (to eliminate duties and other restrictive regulations of commerce with respect to substantially all trade between the parties) i.e.: 99.5 % of EU exports are covered (100% of our trade in industrial

products in 10 years; and around 90% of agriculture after 17 years). In addition, it will allow for the dismantling of several important non-tariff barriers. Ecuador will benefit from substantial new access to the EU market in particular for their key agriculture export: bananas, and the EU will grant 100% duty-free coverage for fisheries of Ecuadorian origin and liberalise 99,9% of industrial tariff lines and 100% of industrial imports at entry into force.

On services and establishment as well as public procurement coverage, the agreement matches the ambition of the Trade Agreement with Colombia and Peru. 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 appropriately low thresholds.

The Trade Agreement also establishes a set of disciplines which go beyond those agreed in the multilateral framework, notably on intellectual property (e.g. 116 EU geographical indications protected in Ecuador, 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, via its accession Ecuador will participate in the Trade Committee as well as in a set of sub-committees which 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. The possibility of the EU to avail itself of the bilateral dispute settlement mechanism foreseen under the agreement will also contribute to this objective.

The Protocol should be applied provisionally, pending the completion of internal procedures for its entry into force. By the provisional application of the Protocol, the provisions of the Trade Agreement also apply provisionally, with the exception of Articles 2, 202 (1), 291 and 292 thereof, as in the case of the Trade Agreement with Colombia and Peru<sup>1</sup>.

- **Implementation plans and monitoring, evaluation and reporting arrangements**

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<sup>1</sup> 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. OJ L 354, 21 December 2012 p. 1

Under the general provisions of the Trade Agreement, the Parties undertake to continuously monitor the operation and impact of this Trade Agreement.

Ecuador will take part in the Trade Committee that is established in accordance with Article 12 of the Trade Agreement, which oversees and is responsible for the operation, implementation and correct application of the Trade Agreement.

The Trade Committee also supervises the work of all specialised bodies established under the Agreement, to which Ecuador will also participate as a Party to the Trade Agreement.

The following specialised bodies have already been established under the auspices of the Trade Committee.

- Market Access Subcommittee.
- Agriculture Subcommittee
- Subcommittee of Sanitary and Phytosanitary Measures
- Sub-committee on Government Procurement
- IPR Subcommittee.
- Customs Subcommittee.
- Subcommittee on Trade and Sustainable Development.
- Technical Barriers to Trade Subcommittee.

As far as reporting, in accordance with Regulation (EU) No 19/2013 the Commission committed to submit an annual report to the European Parliament and the Council on the application, implementation and fulfilment of obligations of the Agreement. Two such reports have been submitted, most recently on February 2016

- **Detailed explanation of the specific provisions of the proposal**

The proposal in articles 1 and 2 and 3 contains provisions on the signing of the Protocol on behalf of the Union, on the establishment of the instrument of full powers to sign the Protocol, and on its application between the EU and Ecuador on a provisional basis by the Union. It also contains provisions on the publication in the Official Journal of the European Union by the General Secretariat of the Council.

Article 4 specifies that the Protocol of Accession must not be construed as conferring rights or imposing obligations which can be directly invoked before European Union or Member State courts or tribunals.

Article 5 establishes the date of the entry into force of the Decision.

Proposal for a

## COUNCIL DECISION

**on the signing, on behalf of the European Union, and provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the Accession of Ecuador**

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 the first subparagraph of 207(4), in conjunction with Article 218(5), thereof,

Having regard to the proposal from the European Commission,<sup>2</sup>

Whereas:

- (1) On 19 January 2009 the Council authorised the Commission to negotiate a trade agreement on behalf of the Union with those Member Countries of the Andean Community which shared the aim to reach an ambitious, comprehensive, and balanced trade agreement.
- (2) On 26 June 2012, the Union signed the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part<sup>3</sup> ("Trade Agreement"). The Trade Agreement has been provisionally applied since 1 March 2013 for Peru and 1 August 2013 for Colombia.
- (3) Article 329 of the Trade Agreement lays down the provisions whereby other Member Countries of the Andean Community can become Parties to the Trade Agreement.
- (4) Negotiations for the Protocol of Accession by Ecuador to the Trade Agreement were conducted between the Union and Ecuador in 2014. The negotiations were concluded on 17 July 2014.
- (5) The text of the Protocol was approved by the Trade Committee of the Trade Agreement at its meeting of 8 February 2016.
- (6) The Protocol should be signed on behalf of the Union and it should be applied, on a provisional basis, pending the completion of the procedures for its conclusion. As a result of the provisional application of the Protocol, the Trade Agreement applies provisionally.

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<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ L 354, 21.12.2012, p. 3.



- (7) The provisional application provided for in this Decision does not prejudice the allocation of competences between the Union and its Member States in accordance with the Treaties.
- (8) The Protocol should not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.
- (9) The Protocol should be signed,

HAS ADOPTED THIS DECISION:

#### *Article 1*

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

#### *Article 2*

The Council Secretariat General shall establish the instrument of full powers to sign the Protocol of Accession on behalf of the European Union, subject to its conclusion, for the person(s) indicated by the negotiator.

#### *Article 3*

1. The Protocol shall be applied between the Union and Ecuador on a provisional basis by the Union as provided for in Article 27(4) thereof, pending the completion of the procedures for its conclusion. As a result, the provisions of the Trade Agreement shall be applied on a provisional basis by the Union as provided for in Article 330(3) thereof, pending the procedures for the conclusion of the said Protocol, with the exception of Articles 2, 202 (1), 291 and 292 thereof.
2. The date from which the Protocol will be provisionally applied shall be published in the Official Journal of the European Union by the General Secretariat of the Council.

#### *Article 4*

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

#### *Article 5*

This Decision shall enter into force on the date 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 signing, on behalf of the European Union, and provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the Accession of Ecuador.

**2. BUDGET LINES**

Chapter and Article: Chapter 12, Article 120

Amount budgeted for the year 2016:

**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:

(EUR million to one decimal place)

Budget line	Revenue <sup>4</sup>	12 month period, starting dd/mm/yyyy	[Year n]
Article 120	<i>Impact on own resources</i>	Date of provisional application	

Situation following action					
	[n + 1]	[n + 2]	[n + 3]	[n + 4]	[n + 10]
Article 120					80

<sup>4</sup> 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.

#### **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 Protocol of Accession, which also provides for the application of the necessary provisions of the Trade Agreement 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 estimate is based on the average volume of imports over the period 2012-2014.