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European Union

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WTO 36  
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### DECLASSIFICATION

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dated:	5 March 2007
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Subject:	Draft negotiating directives for FTA with ASEAN countries, India and Korea and for Association Agreements with the Andean Community and Central America (trade chapter)

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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# RESTREINT UE



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 5 March 2007**

**7013/07**

**RESTREINT UE**

**WTO 36  
SERVICES 14  
AMLAT 20  
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## **NOTE**

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From : General Secretariat of the Council

To : Delegations

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No. Cion prop. : 16489/06 WTO 258 COASI 178 RESTREINT UE

16483/06 WTO 252 COASI 172 RESTREINT UE

16485/06 WTO 254 COASI 174 RESTREINT UE

16511/06 WTO 264 AMLAT 105 RESTREINT UE + ADD1 + ADD2

16491/06 WTO 260 AMLAT 102 RESTREINT UE + ADD1 + ADD2

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Subject : Draft negotiating directives for FTA with ASEAN countries, India and Korea and for Association Agreements with the Andean Community and Central America (trade chapter)

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Delegations will find in annex to this note the texts of the above-mentioned five draft negotiating directives, following the discussions at the 133 Committee (Full Members) on 23 February 2007. <sup>1</sup>

Annex 6 contains declarations to be entered in the Council minutes.

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<sup>1</sup> The DK delegation entered a parliamentary scrutiny reservation.

# RESTREINT UE

ANNEX 1

Draft

## RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

**authorising the Commission to negotiate a free trade agreement with countries of the Association of South East Asian Nations (ASEAN) <sup>1</sup> on behalf of the European Community and its Member States**

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<sup>1</sup> Consultations are ongoing with ASEAN on the architecture of the FTA negotiations. Upon conclusion of these consultations and prior to the adoption of this recommendation, the Commission will present its proposal concerning the countries with whom negotiations should be launched

# **RESTREINT UE**

## **1. EXPLANATORY MEMORANDUM**

### **1. BACKGROUND**

#### **1.1. EU policy on Free Trade Agreements**

The Commission's Communication "Global Europe: competing in the world"<sup>3</sup> reviewed the contribution of EU trade policy to the European Growth and Jobs Strategy. It confirmed the EU's commitment to the World Trade Organisation (WTO) as the single most effective means of expanding and managing trade for the benefit of all. It stressed that the Doha Development Agenda (DDA) remains the EU's first priority and that we will work hard to resume negotiations. The Communication also argued that the EU should build on the platform created by the WTO to generate new opportunities for growth by opening markets further to trade and investment. The Communication set out a series of linked trade policy initiatives complementing efforts to resume negotiations in the WTO. As part of these initiatives, it proposed to negotiate carefully chosen comprehensive Free Trade Agreements (FTAs).

FTAs, if approached with care, can go further and faster in promoting openness and integration, by tackling issues which are not ready for multilateral discussion. The Communication stressed that we should continue to factor in other issues and the wider role of trade policy in EU external relations into bilateral trade developments. But in order for trade policy to help create jobs and drive growth, economic factors must play a primary role in the choice of future FTAs. The key economic criteria for new FTA partners should be market potential (economic size and growth) and the level of protection against EU export interests (tariffs and non-tariff barriers), while taking account of our potential partners' negotiations with EU competitors.

In terms of content, new competitiveness-driven FTAs would need to be comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation, including far-reaching liberalisation of services and investment. Future FTAs would also need new ways of addressing non-tariff barriers and incorporating provisions on trade-related aspects of sustainable development.

The Communication stresses the need to ensure that we share similar ambitions with our prospective partners at the outset in order to avoid negotiations later stalling due to a mismatch of expectations.

On 13 November 2006, the Council of the European Union concluded that it supports the early launch of negotiations with countries of the Association of South East Asian Nations (ASEAN), India, and the Republic of Korea (hereafter referred to as Korea), and invited the Commission to submit proposals for the negotiating directives without delay.

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<sup>3</sup> COM(2006) 567, "Global Europe: competing in the world", 4 October 2006

# RESTREINT UE

## 1.2. EU-ASEAN Relations

The relationship between the European Union and the member countries of ASEAN is an important and longstanding one, with the existing Co-operation Agreement between the EC and certain member countries of ASEAN dating from 1980. In July 2003, the European Commission adopted a Communication on a "New Partnership with South East Asia", setting out a comprehensive strategy for future EU relations with the countries of the region and, in particular, recognising the need to inject a new dynamism into trade and investment relations on a regional basis.

A key initiative was proposed within this strategy, the ongoing trade action plan, known as the *Trans-Regional EU-ASEAN Trade Initiative (TREATI)*, which reflects the desire of all partners to expand trade and investment ties and has provided a framework for dialogue and regulatory co-operation on various trade facilitation, market access, and investment issues between the two regions, and increasingly also acting as a forum for the exchange of experience on regional economic integration.

On the bilateral level, negotiations for bilateral Partnership and Co-operation agreements are well underway with Thailand and Singapore, and have started with Indonesia. Malaysia, the Philippines, and Brunei have also shown an interest. Vietnam is keen to upgrade its existing agreement into a more comprehensive political framework. The intention is to establish such agreements with all of the interested countries in the region as soon as possible.

While these are important and significant steps, it is clear that recent rapid developments in the Asian region as a whole – notably the progress of ASEAN's own economic integration and the establishment of a vast network of new free trade agreements with ASEAN at its hub, demand a strong response from the EU. This response must demonstrate our desire for a much more substantive and comprehensive economic engagement with ASEAN, providing a vehicle to increase our market access to a rapidly expanding and developing region, commensurate with the EU's position as ASEAN's third largest trading partner.

The thrust of the existing agreements and ongoing negotiations is rather on the political side and trade aspects need to be further reinforced. European industry has expressed an urgent request in light of the preferential market access being provided to its competitors and in order to exploit more effectively new economic opportunities with one of the most dynamic regions in the world. A comprehensive economic and political approach will strengthen Europe's position and influence in Southeast Asia.

Furthermore, as these countries continue to develop economically, the impact of non-tariff barriers on our trade is growing and the need for a more robust framework to resolve such issues will become even more urgent. The establishment of a free trade area provides an additional incentive for ASEAN countries both to profit from our experience and identify solutions and approaches which are more compatible with those of the EU.

# RESTREINT UE

## 2. NATURE AND SCOPE OF THE AGREEMENT

A comprehensive FTA with the countries of ASEAN should aim to improve market access for goods and services, covering substantially all trade. It should provide for enhanced provisions on trade in goods and services and include binding provisions on regulatory transparency in areas relevant for mutual trade and investment, including standards and conformity assessment, sanitary and phytosanitary rules, intellectual property rights including enforcement, trade facilitation and customs, public procurement, and trade and competition, including state aid. It should also provide for co-operation on trade and sustainable development, including both its environmental and social dimensions.

In going above and beyond the existing commitments in the WTO, the FTA should be fully WTO-compliant, in particular, with Article XXIV of the General Agreement on Tariffs and Trade (GATT) and Article V of the General Agreement on Trade in Services (GATS).

The relationship between the FTA provisions and the Partnership and Co-operation provisions will require further examination prior to the conclusion of the agreements.

This approach is in line with the "Global Europe" strategy, which underlines that new competitiveness-driven FTAs would need to be comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation, including far-reaching liberalisation of services and investment.

## 3. PREPARATION OF THE DRAFT NEGOTIATING DIRECTIVES

Consultations with Member States, EU institutions, civil society (including European business) and ASEAN countries have taken place for the preparation of the draft negotiating directives, as well as for the accompanying impact assessment. These consultations were undertaken in the context of the future orientations for EU trade policy, the related adaptation of its FTA strategy, and the specific prospects for an FTA with ASEAN countries.

Consultations with ASEAN are still ongoing with regard to the architecture of the FTA, taking into account the diversity in the economic situation of ASEAN members. The Commission will inform the Council of the results of these consultations prior to the adoption of the negotiating directives, including its proposal with regard to the ASEAN countries with whom to launch negotiations.

The Commission has drafted an impact assessment which analyses the possible impact of an FTA with ASEAN countries. A more detailed Sustainability Impact Assessment (SIA) examining the Agreement's potential economic, social, and environmental effects will be conducted in parallel to the negotiations.

## 4. PROCEDURES

The objective is to complete these negotiations no later than two years after their effective start. In line with normal practice, the Commission will report regularly to Member States in the appropriate committees of the Council on progress in the negotiations. When negotiations are more advanced, the Commission will make an assessment of how to proceed, including the option of bilateral negotiations with ASEAN countries, in coherence with PCA negotiations, if it is not possible to conclude negotiations at a regional level.

# **RESTREINT UE**

## **2. RECOMMENDATION**

In light of the above, the Commission recommends that:

- The Council authorises the Commission to negotiate, on behalf of the European Community and its Member States, a Free Trade Agreement with countries of the Association of South East Asian Nations (ASEAN);
- The Council appoints a special Committee (133) to assist it in this task;
- The Council issues the attached negotiating directives.

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## ANNEX

### DIRECTIVES FOR THE NEGOTIATION OF A FREE TRADE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES AND COUNTRIES OF THE ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN)

#### NATURE AND SCOPE OF THE AGREEMENT

1. The Free Trade Agreement (FTA) will exclusively contain trade provisions applicable between the parties. Other issues will be regulated under the existing co-operation agreements or in the non-trade provisions of future Partnership and Co-operation Agreements (PCAs) with the countries concerned. The legal relationship between the free trade provisions and the PCAs or other co-operation agreements will be decided prior to their conclusion.
2. The Agreement shall be comprehensive, balanced, and fully consistent with World Trade Organisation (WTO) rules and obligations. **The Doha round remains the priority of the EU. The negotiations will be conducted and concluded with due regard to commitments under WTO.**
3. The Agreement shall provide for the progressive and reciprocal liberalisation of trade in goods and services as well as rules on trade-related issues.

#### PREAMBLE AND GENERAL PRINCIPLES

4. The preamble will indicate that the partnership between the European Community (EC) and countries of ASEAN is based upon common principles and values, and will refer, inter alia, to:
  - The commitment of the parties to sustainable development and the contribution of international trade to sustainable development in its economic, social and environmental dimensions, including economic development, poverty reduction, full and productive employment and decent work for all, as well as the protection and preservation of the environment and natural resources;
  - The commitment of the parties to an FTA in full compliance with their rights and obligations arising out of the WTO;
  - The right of the parties to take measures necessary to achieve legitimate public policy objectives on the basis of the level of protection that they deem appropriate, provided that such measures do not constitute a means of unjustifiable discrimination or a disguised restriction of international trade;
  - The belief that the FTA will create a new climate for trade relations between the two parties and above all for the development of trade and investment;
  - The commitment of the parties to communicate with all relevant interested parties including the private sector and civil society organisations.

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## STRUCTURE AND ORGANISATION OF NEGOTIATIONS

- 4bis. The Commission shall conduct the negotiations in consultation with the Article 133 Committee. The Commission shall report regularly to this committee and other relevant Committees on the progress of the negotiations.

On matters falling within their competence, Member States may attend the negotiating sessions and will be consulted for the establishment of negotiating documents, through the Ad Hoc Article 133 Committee (Services) and the Article 133 Committee (Deputies).

## TITLE 1: OBJECTIVES

5. The Agreement shall confirm the joint objective of progressively and reciprocally liberalising substantially all trade in goods and services, in full compliance with WTO rules.
6. The Agreement will recognise that sustainable development is an overarching objective of the parties and will aim at ensuring and facilitating respect of international environmental and social agreements and standards. The Agreement will recognise that the parties shall not encourage foreign direct investment by lowering domestic environmental, labour or occupational health and safety legislation and standards, or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity.

The Agreement's economic, social and environmental impacts will be examined by means of an independent Sustainability Impact Assessment (SIA), which the Commission shall undertake in parallel with the negotiations and which will be finalised ahead of the signature of any final Agreement. The SIA will aim to clarify the likely effects of the Agreement on sustainable development on both sides, and the potential impact on LDCs and neighbouring poor and vulnerable countries, as well as to propose measures (trade or non trade) to maximise the benefits of the Agreement and prevent or minimise potential negative impacts. There will be a specific chapter of the Agreement on trade and sustainable development, including both social and environmental issues, and addressing such measures. Sustainable development will also be taken into account throughout the Agreement.

## TITLE 2: TRADE IN GOODS

7. Duties on imports and exports and non-tariff measures

The aim of the Agreement will be to dismantle import duties and charges having an equivalent effect on both sides within 7 years, with a view to offering similar market access opportunities on both sides at the end of this period. Taking into account their different levels of development, individual ASEAN countries will have a certain measure of flexibility as regards transitional periods. The Agreement will cover substantially all trade in goods between the parties. The aim will be to ensure the highest possible degree of trade liberalisation.

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Negotiations on tariff reduction shall take place on the basis of the duties applied by the Community erga omnes on the date of launch of negotiations and the external tariff applied by each ASEAN country erga omnes on the date of launch of negotiations. As from the first day of the start of the negotiations, the Parties shall agree that any increase in tariff duties shall not be taken into account during the negotiations.

8. The Agreement shall provide for a maximum of frontloading of full liberalisation commitments, taking into account the importance of ensuring to the maximum extent feasible parity with FTAs being negotiated by ASEAN countries with other major trading partners, as well as the different levels of development of ASEAN countries.
9. Specific provisions will regulate products identified as sensitive, for which for instance, longer transitional periods which should not exceed 10 years, or partial liberalisation commitments with a review clause will be foreseen. Any such specific provisions or treatment will be limited to certain sensitive products. For products not subject to full liberalisation commitments, following the application of the Agreement, a clause will consider possibilities for further liberalisation.
10. The Agreement will forbid any ban, restriction or other non-tariff barrier (NTB) to trade which is not justified by the general exceptions set out below, and which could amount to a means of arbitrary discrimination or a disguised restriction on trade between the parties. Provisions and procedures will be included to ensure the elimination of unjustified non-tariff obstacles to trade. The Agreement will contain provisions concerning the prohibition of fiscal discrimination. Product-specific NTBs should be solved on a request and offer basis, in parallel with exchanges on tariff concessions. Where relevant to further the objectives of the Agreement and to improve market access at a level greater than that delivered through horizontal rules, the Agreement should include sector specific commitments on NTBs. The Agreement will also envisage appropriate domestic procedures to prevent NTBs and other unnecessary obstacles to trade, including through transparency in regulations.
11. All customs duties, taxes or charges on exports and quantitative restrictions on exports to the other party which are not justified by exceptions under the Agreement shall be abolished upon the application of the Agreement.
12. Rules of origin  

An annex setting out ~~simple, modern and~~ development-friendly rules of origin and providing for administrative co-operation and which would take into account the results of the current process of reform of rules of origin will be attached to the Agreement.
13. Anti-fraud measures  

A clause in the Agreement concerning enhanced administrative co-operation will set out the procedures and appropriate measures that the parties may take where a lack of administrative co-operation in customs matters, irregularities or fraud are established.

# RESTREINT UE

## 14. Management of administrative errors

Provisions should also be included to examine jointly the possibility of adopting appropriate measures in case of errors committed by the competent authorities in the application of the preferential rules of origin.

## 15. Technical regulations on industrial products, standards and conformity assessment procedures

Apart from confirming the provisions of the WTO Agreement on Technical Barriers to Trade, the parties shall also establish provisions that facilitate access to each others' markets. The Agreement will contain a number of general principles (such as proportionality, no undue restrictions, transparency, non-discrimination) as set out in the WTO Agreement on Technical Barriers to Trade, to be applied by the parties in their mutual trade.. The aim will be to include provisions on the adoption of recognised international standards and on the streamlining of testing requirements in a number of priority sectors. The Agreement will also aim at improving dissemination of information to importers and exporters, developing common views and promoting good regulatory practice, seeking compatibility and convergence of technical regulations and conformity assessment, promoting close co-operation with and between relevant organisations responsible for standardisation and accreditation.

## 16. Sanitary and phytosanitary measures

On sanitary and phytosanitary measures, the conditions negotiated shall follow the provisions of the negotiating directives adopted by the Council on 20 February 1995 (Council document 4976/95). Furthermore, the Agreement will refer to a number of general principles of the WTO Agreement on Sanitary and Phytosanitary Measures, including proportionality, undue delays, transparency, and non-discrimination, to be applied by the parties in their mutual trade, with the objective of facilitating access to each other's market while safeguarding public animal and plant health.

The Agreement should in particular seek to achieve full transparency as regards sanitary and phytosanitary measures applicable to trade, work towards the establishment of a reciprocal mechanism for recognition of equivalence including the pre-listing of food-producing establishments, and work towards recognition of the disease-free health status of the parties and the principle of regionalisation for both animal and plant diseases, while maintaining essential minimal checks at the external border. Animal welfare shall be within its scope.

## 17. General exceptions

The Agreement will include a general exception clause based on Articles XX and XXI of the GATT.

# RESTREINT UE

## 18. Safeguards

To maximise liberalisation commitments, the Agreement will contain a bilateral agricultural safeguard clause by which either party may restore Most Favoured Nation duties where a rise in imports of a product from the other party is causing or threatening to cause serious injury to its domestic industry.

## 19. Anti-dumping and countervailing measures

The Agreement will include a clause on anti-dumping and countervailing measures providing that any of the parties may take appropriate measures against dumping and/or countervailable subsidies in accordance with the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or the WTO Agreement on Subsidies and Countervailing Measures. The Agreement will also integrate commitments that go beyond WTO rules in this area in line with EC rules and previous agreements (e.g. public interest test and lesser-duty rule, additional consultations).

### TITLE 3: TRADE IN SERVICES, ESTABLISHMENT

20. [The Agreement shall provide for the progressive and reciprocal liberalisation of establishment and of trade in services with the aim to ensure a high level of market access opportunities, consistent with the relevant WTO rules, in particular Article V of the GATS.

Taking into account their levels of development, individual ASEAN countries will be allowed a certain measure of flexibility in overall terms as well as in individual sectors and subsectors. Any transitional period should in principle not exceed 10 years.

While respecting Article V of the GATS, the commitments made by the European Community shall not include:

- National maritime cabotage, and
- Air services, including domestic and international air transportation services whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - i. Aircraft repair and maintenance services during which an aircraft is withdrawn from service,*
  - ii. Selling and marketing of air transport services,*
  - iii. Computer reservation system (CRS) services, and*
  - iv. Other ancillary services that facilitate the operations of air carriers.*
- Mining, manufacturing and processing of nuclear materials;
- Production of or trade in arms, munitions and war materials.

# RESTREINT UE

The services supplied in the exercise of governmental authority as defined by Article I-3 of the GATS shall be excluded from these negotiations.]<sup>4</sup>

20. bis Audio-visual and other cultural services will be treated in a specific audio-visual and cultural co-operation framework. In developing this co-operation framework, the parties will maintain the possibility to preserve and develop their capacity to define and implement their cultural and audio-visual policies for the purpose of preserving their cultural diversity, while promoting cultural and audio-visual exchanges and favouring inter-cultural dialogue.
21. Respecting the respective competences of the EC and its Member States, the parties shall agree to establish a framework for establishment, which will be based on principles of transparency, non-discrimination, market access, stability and on general principles of protection, based on the Minimum Platform on Investment for EU FTAs, as agreed within the framework of the Article 133 Committee (doc. St 15375/06).

Within this framework, the parties shall agree to grant treatment no less favourable for the establishment in their territory of the companies, subsidiaries or branches of the other party than that accorded to their own companies, subsidiaries or branches, taking due account of the sensitive nature of certain specific sectors.

Nothing in this framework shall be taken to limit the rights of investors of the parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Community and a country or countries of ASEAN are Parties.

22. [The negotiations shall address barriers to market access and limitations on national treatment across all economic sectors and modes of supply. Taking due account of the sensitive nature of certain specific sectors, they shall also aim to establish regulatory disciplines needed to underpin and facilitate trade.]<sup>5</sup>
23. Whenever an ASEAN partner has concluded another economic integration agreement with a third country which is not within the ASEAN region, EU investors and service suppliers shall be granted at least parity with the treatments granted to investors and service suppliers of this third country as regards to cross-border supply of services and establishment.
24. The Agreement will not preclude the enforcement of exceptions on the supply of services justifiable under the relevant WTO rules (Articles XIV and XIV bis GATS). The Commission should also ensure that nothing in the Agreement should prevent the Parties from applying their national laws, regulations and requirements regarding entry and stay, work and labour conditions provided that, in doing so, they do not nullify or impair the benefits accruing from the Agreement.

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<sup>4</sup> BE: scrutiny reservation.

<sup>5</sup> BE: scrutiny reservation.

# RESTREINT UE

## TITLE 4: PUBLIC PROCUREMENT

25. The Agreement shall provide for a set of binding rules including adequate transparency provisions that support the setting up of effective procurement systems. They will also provide for challenge procedures and co-operation in the field of electronic procurement. To the extent appropriate, the procurement chapter should be consistent with the revised Government Procurement Agreement. The Agreement will envisage the progressive liberalisation of procurement markets at national, regional and, where appropriate, local levels, as well as in the field of public utilities, in particular in priority sectors. The agreement will envisage gradual and mutual market access on the basis of the principles of non-discrimination and national treatment. Market access commitments will take into account the different levels of development of ASEAN countries.

## TITLE 5: TRADE AND COMPETITION

26. The Agreement shall include provisions on competition addressing competition rules and their enforcement.
27. These provisions shall identify anti-competitive behaviour that would be considered incompatible with the proper functioning of the Agreement, to the extent that it affects trade between the parties, and include rules on restrictive agreements and concerted practices between undertakings, abuse of dominant position, mergers and state aid.
28. The provisions on competition shall address the appropriate legal framework and bodies in charge of implementation of competition rules to guarantee a transparent and an effective enforcement of their respective competition rules.
29. In order to facilitate reciprocal consultations and exchange of non-confidential information between the parties, provisions on appropriate co-operation in the field of trade and competition could be considered on a regional basis.

## TITLE 6: INTELLECTUAL PROPERTY RIGHTS

30. The Agreement will include rules to ensure effective and adequate protection and enforcement of intellectual property rights (IPR). The Agreement shall include commitments to adhere to multilateral agreements in this field, and well developed elements on the recognition, protection and effective enforcement of rights, including on geographical indications and fight against counterfeiting and piracy. The Agreement shall contain provisions effectively recognising and protecting ex officio geographical indications, including the phasing out of generic denominations.

## TITLE 7: CAPITAL MOVEMENT AND PAYMENTS

31. The Agreement will strive for full liberalisation of current payments and capital movement, and include a standstill clause. It will entail carve-out provisions (e.g. in case of serious difficulties for monetary and exchange rate policy, or for prudential supervision, or taxation), which will be in accordance with the provisions of the EC Treaty on the free movement of capital. Negotiations shall take into account the sensitivities attached to the liberalisation of capital movements not linked to direct investment.

# RESTREINT UE

## TITLE 8: CUSTOMS AND TRADE FACILITATION

32. The Agreement shall include provisions to facilitate trade between the parties, while ensuring effective controls. To this end, it shall include commitments on rules, requirements, formalities and procedures of the parties related to imports, export and transit.
33. The Agreement shall promote the effective implementation and application of international rules and standards in the field of customs and other trade-related procedures, including WTO provisions, and World Customs Organisation instruments, inter alia, the revised Kyoto Convention. It shall also promote effective regional transit arrangements.

The Agreement shall include provisions to promote the exchange of best practice and experience, relating to particular areas of mutual interest. These areas may include issues such as modernisation and simplification of rules and procedures, standardised documentation, tariff classification, transparency and consultation, and inter-agency co-operation. The Agreement shall promote convergence in the trade facilitation field, where appropriate, building on relevant international standards and instruments.

34. The Agreement shall promote effective and efficient IPR enforcement by customs authorities, regarding imports, exports, re-exports, transshipments and other customs procedures, and in particular as regards counterfeit goods.
35. The parties shall aim at negotiating Customs Co-operation and Mutual Administrative Assistance Agreements which shall include, among others, provisions on joint co-operation, mutual exchange of information, technical expertise, confidentiality and the submission of evidence in judicial proceedings. The parties shall be encouraged to speed up the conclusion of such agreements under the existing mandate of the Commission. The parties should draw upon existing co-operation mechanisms and may consider developing additional provisions concerning co-operation on trade-related customs issues.

## TITLE 9: TRADE AND SUSTAINABLE DEVELOPMENT

36. The Agreement will include commitments by both sides in terms of the social and environmental aspects of trade and sustainable development. The Agreement will include provisions to promote adherence to and effective implementation of internationally agreed standards in the social and environmental domain as a necessary condition for sustainable development. The Agreement will also include mechanisms to support the promotion of decent work through effective domestic implementation of International Labour Organisation (ILO) core labour standards, as defined in the 1998 ILO Declaration of Fundamental Principles and Rights at Work as well as enhancing co-operation on trade-related aspects of sustainable development. Consideration will also be given to measures to facilitate and promote trade in environmental goods, services and technology. The Agreement will foresee the monitoring of the implementation of these commitments, and of the social and environmental impacts of the Agreement, through inter alia review and public scrutiny, as well as instruments of encouragement and trade-related co-operation activities, including with relevant international fora.

# RESTREINT UE

## TITLE 10: TRANSPARENCY OF REGULATIONS

37. The Agreement will include provisions regarding:
- The commitment to consult stakeholders in advance of the introduction of regulations with an impact on trade;
  - The publication of, and public consultations on, all general rules with an impact on international trade in goods and services;
  - The procedures to avoid trade problems arising from regulations at an early stage;
  - Transparency as regards the administration, implementation and application of regulations having an impact on international trade in goods or services, including appropriate review procedures;
  - The creation of enquiry points and one-stop shops designed to provide specific information and to respond promptly to questions and enquiries regarding the operation of the Agreement.
- ~~— Commitment to recognise and take steps to implement the principles of good governance in financial and tax areas relating to trade such as transparency and exchange of information, where appropriate and without prejudice to EU Member States' competences. <sup>6</sup>~~

## TITLE 11: INSTITUTIONAL FRAMEWORK AND FINAL PROVISIONS

38. The Agreement will set up a specific Trade Commission to monitor the implementation of the Agreement. Committees in specific areas may be established as appropriate and will operate under the framework of the Trade Commission.
39. In case of parallel FTA and Partnership and Co-operation Agreements (PCAs) with ASEAN countries, the conclusion of the Free Trade Agreement will be subject to the conclusion of PCAs with the respective countries. The relationship between the free trade and the partnership and co-operation provisions (in one single or two separate agreements) will be decided during the negotiations. This decision will ensure external political and economic coherence in particular in respect of the existence, application, suspension, and termination of the respective provisions. As regards the institutional framework, it will be ensured that the trade and non-trade provisions will be administered through a coherent institutional structure. The Trade Commission shall report to the Joint Committees to be established under the PCAs, according to their bilateral competences.

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<sup>6</sup> The Commission noted the unanimous agreement of Member States to delete this indent but maintained a reservation.  
The UK delegation stated that the deletion of this indent is a prerequisite for its final agreement to the draft negotiating directives.

# RESTREINT UE

## Dispute settlement

40. The Agreement will include an appropriate and well-functioning dispute settlement mechanism, which will ensure that the parties observe mutually agreed rules.
41. The Agreement will include provisions for expedient problem-solving such as a flexible mediation mechanism. This mechanism would be without prejudice to the parties' rights and obligations or to dispute settlement provided for under the Agreement.

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ANNEX 2

Draft

## RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

authorising the Commission to negotiate a free trade agreement with India on behalf of the European Community and its Member States

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# RESTREINT UE

## 1. EXPLANATORY MEMORANDUM

### 1. BACKGROUND

#### 1.1. EU Policy on Free Trade Agreements

The Commission's Communication "Global Europe: competing in the world"<sup>1</sup> reviewed the contribution of EU trade policy to the European growth and jobs strategy. It confirmed the EU's commitment to the World Trade Organisation (WTO) as the single most effective means of expanding and managing trade for the benefit of all. It stressed that the Doha Development Agenda (DDA) remains the EU's first priority, and that we will work hard to resume negotiations. The Communication also argued that the EU should build on the platform created by the WTO to generate new opportunities for growth by opening markets further to trade and investment. The Communication set out a series of linked trade policy initiatives complementing efforts to resume negotiations in the WTO. As part of these initiatives, it proposed to negotiate carefully chosen comprehensive Free Trade Agreements (FTAs).

FTAs, if approached with care, can go further and faster in promoting openness and integration, by tackling issues which are not ready for multilateral discussion. The Communication stressed that we should continue to factor in other issues and the wider role of trade policy in EU external relations into bilateral trade developments. But in order for trade policy to help create jobs and drive growth, economic factors must play a primary role in the choice of future FTAs.

The key economic criteria for new FTA partners should be market potential (economic size and growth) and the level of protection against EU export interests (tariffs and non-tariff barriers), while taking account of our potential partners' negotiations with EU competitors.

In terms of content new competitiveness-driven FTAs would need to be comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation including far-reaching liberalisation of services and investment. Future FTAs would also need new ways of addressing non-tariff barriers and incorporating provisions on trade-related aspects of sustainable development.

The Communication stresses the need to ensure that we share similar ambitions with our prospective partners at the outset in order to avoid negotiations later stalling due to a mismatch of expectations.

On 13 November 2006, the Council of the European Union concluded that it supports the early launch of negotiations with countries of ASEAN<sup>2</sup>, India, and the Republic of Korea, and invited the Commission to submit proposals for the negotiating directives without delay.

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<sup>1</sup> COM(2006) 567, "Global Europe: competing in the world", 4 October 2006

<sup>2</sup> The Association of South East Asian Nations

# RESTREINT UE

## 1.2. EU-India Relations

EU-India relations have developed at a remarkable speed over the past three years, witnessing a shared interest in a strengthened relationship. The 6<sup>th</sup> EU-India Summit held in September 2005 in Delhi was the culmination of a process of upgrading the of EU-India relations, which started at the Hague Summit in 2004. At this Summit, EU and India agreed to upgrade their relations to a Strategic Partnership, as recommended by a 2004 Commission Communication on EU-India Relations, which was based on an integrated economic and political approach. This Communication recognised India's economic growth and potential as a global player. The 2005 EU-India Summit endorsed a wide-ranging Joint Action Plan, covering all aspects of EU-India relations.

As regards trade and economic cooperation, the 2005 EU-India Summit generated a political commitment to increase bilateral trade and economic cooperation and to tackle barriers to trade and investment. Within the Joint Action Plan, the Summit launched a High Level Trade Group (HLTG) and mandated it "to study and explore ways and means to deepen and widen the bilateral trade and investment relationship". The HLTG was also tasked with examining the possibility of launching negotiations on a broad-based trade and investment agreement, and invited to report to the 2006 EU-India Summit.

The High Level Trade Group in its report to the Summit recommended that "an expanded trade partnership be developed through the negotiation of a broad-based trade and investment agreement, considering that significant benefits would accrue to both EU and India if this agreement were substantial and comprehensive, covering a broad range of trade-related areas".

The EU-India Summit on 13 October in its Joint Statement endorsed the case made for a broad based bilateral trade and investment agreement, and agreed that both sides move towards negotiations for such an agreement.

India fully meets the key economic criteria defined for new FTA partners. It combines a sizeable market, high economic growth and substantial tariff and non-tariff barriers to trade against EU interests. Furthermore, while India does not currently have FTAs with EU main competitors, it is in the process of negotiating or preparing Free Trade Agreements with a number of trading partners. The HLTG report gives an indication of the willingness of India to negotiate a comprehensive FTA covering a broad range of obstacles to trade. A comprehensive FTA with India would secure our positions and bring significant market opportunities for the EU.

## **2. NATURE AND SCOPE OF THE AGREEMENT**

A comprehensive FTA with India should aim to improve market access for goods and services, covering substantially all trade. It should provide for enhanced provisions on trade in goods and services, and include binding provisions on regulatory transparency in areas relevant for mutual trade and investment, including standards and conformity assessment, sanitary and phytosanitary rules, intellectual property rights including enforcement, trade facilitation and customs, public procurement, and trade and competition including state aid. It should also provide for co-operation on trade and sustainable development, including both its environmental and social dimensions. In going above and beyond the existing commitments in the WTO, the FTA should be fully WTO-compliant, in particular, with Article XXIV of the General Agreement on Tariffs and Trade (GATT) and Article V of the General Agreement on Trade in Services (GATS). The comprehensive FTA should complement the 1994 EC-India Co-operation Agreement, to which it should be legally and institutionally linked.

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This approach is in line with the "Global Europe" strategy, which underlines that new competitiveness-driven FTAs would need to be comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation including far-reaching liberalisation of services and investment.

The EU-India High Level Trade Group, in its report endorsed by the EU-India Summit on 13 October, addressed the issues above and reached an understanding on the key parameters of these aspects a broad-based trade and investment agreement between the EC and India.

### **3. PREPARATION OF THE DRAFT NEGOTIATING DIRECTIVES**

Consultations with Member States, EU institutions, civil society (including European business) and India have taken place for the preparation of the draft negotiating directives, as well as for the accompanying impact assessment. These consultations were undertaken in the context of the future orientations for EU trade policy, the related adaptation of its FTA strategy and the specific prospects for an FTA with India.

The 2005 EU-India Summit launched a High Level Trade Group (HLTG) and mandated it to explore ways and means to deepen and widen the bilateral trade and investment relationship. The HLTG was also tasked with examining the possibility of launching negotiations on a broad-based trade and investment agreement. The report of the HLTG was endorsed by the 2006 EU-India Summit. The Summit welcomed the work done by the HLTG and endorsed the case made for a future broad-based bilateral trade and investment agreement. The Summit agreed that both sides move towards negotiations for such an agreement.

The Commission drafted an impact assessment which analyses the possible impact of an FTA with India. A more detailed Sustainability Impact Assessment (SIA) examining the Agreement's potential economic, social and environmental effects will be conducted in parallel to the negotiations.

### **4. PROCEDURES**

The objective is to complete these negotiations no later than two years after their effective start. In line with normal practice, the Commission will report regularly to Member States in the appropriate committees of the Council on progress in the negotiations.

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## 2. RECOMMENDATION

In light of the above, the Commission recommends that:

- the Council authorises the Commission to negotiate, on behalf of the European Community and its Member States, on behalf of the European Community and its Member States, a Free Trade Agreement with India;
- the Council appoints a special Committee (133) to assist it in this task;
- the Council issues the attached negotiating directives.

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## ANNEX

### DIRECTIVES FOR THE NEGOTIATION OF A FREE TRADE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES AND INDIA

#### NATURE AND SCOPE OF THE AGREEMENT

1. The Free Trade Agreement (FTA) will exclusively contain trade provisions applicable between the parties. Other issues will be regulated in the existing agreements or any future agreement with India.
2. The agreement shall be comprehensive, balanced, and fully consistent with World Trade Organization (WTO) rules and obligations. **The Doha round remains the priority of the EU. The negotiations will be conducted and concluded with due regard to commitments under WTO.**
3. The agreement shall provide for the progressive and reciprocal liberalisation of trade in goods and services as well as rules on trade-related issues.

#### PREAMBLE AND GENERAL PRINCIPLES

4. The preamble will recall that the EU-India Strategic Partnership is based on common principles and values, as reflected in the 1994 EC-India Co-operation Agreement and the 2005 Joint Action Plan, and will also refer, inter alia, to:
  - The commitment of the parties to sustainable development and the contribution of international trade to sustainable development in its economic, social and environmental dimensions, including economic development, poverty reduction, full and productive employment and decent work for all as well as the protection and preservation of the environment and natural resources;
  - The commitment of the parties to an FTA in full compliance with their rights and obligations arising out of the WTO;
  - The right of the parties to take measures necessary to achieve legitimate public policy objectives on the basis of the level of protection that they deem appropriate, provided that such measures do not constitute a means of unjustifiable discrimination or a disguised restriction of international trade;
  - The belief that the FTA will create a new climate for trade relations between the two parties and above all for the development of trade and investment;
  - The commitment of the parties to communicate with all relevant interested parties including the private sector and civil society organisations.

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## STRUCTURE AND ORGANISATION OF NEGOTIATIONS

- 4bis. The Commission shall conduct the negotiations in consultation with the Article 133 Committee. The Commission shall report regularly to this Committee and other relevant Committees on the progress of the negotiations.

On matters falling within their competence Member States may attend the negotiating sessions and will be consulted for the establishment of negotiating documents, through the Ad Hoc Article 133 Committee (Services) and the Article 133 Committee (Deputies).

## TITLE 1: OBJECTIVES

5. The Agreement shall confirm the joint objective of progressively and reciprocally liberalising substantially all trade in goods and services, in full compliance with WTO rules.
6. The Agreement will recognise that sustainable development is an overarching objective of the parties and will aim at ensuring and facilitating respect of international environmental and social agreements and standards. The Agreement will recognise that the parties shall not encourage foreign direct investment by lowering domestic environmental, labour or occupational health and safety legislation and standards or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity.

The Agreement's economic, social and environmental impacts will be examined by means of an independent Sustainability Impact Assessment (SIA), which the Commission shall undertake in parallel with the negotiations and which will be finalised ahead of the signature of any final Agreement. The SIA will aim to clarify the likely effects of the Agreement on sustainable development on both sides, and the potential impact on LDCs and neighbouring poor and vulnerable countries, as well as to propose measures (trade or non-trade) to maximise the benefits of the Agreement and prevent or minimise potential negative impacts. There will be a specific chapter of the Agreement on trade and sustainable development, including both social and environmental issues, and addressing such measures. Sustainable development will also be taken into account throughout the Agreement.

## TITLE 2: TRADE IN GOODS

7. Duties on imports and exports and non-tariff measures

The aim of the Agreement will be to dismantle import duties and charges having an equivalent effect on both sides within 7 years with a view to offering similar market access opportunities on both sides at the end of this period. The Agreement will cover substantially all trade in goods between the parties. The aim will be to ensure the highest possible degree of trade liberalisation.

Negotiations on tariff reduction shall take place on the basis of the duties applied by the European Community *erga omnes* on the date of launch of negotiations and the external tariff applied by India *erga omnes* on the date of launch of negotiations. As from the first day of the start of the negotiations, the Parties shall agree that any increase in tariff duties shall not be taken into account during the negotiations.

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8. The Agreement shall provide for a maximum of frontloading of full liberalisation commitments, taking into account the importance of ensuring to the maximum extent feasible parity with FTAs being negotiated by India with other major trading partners.
9. Specific provisions will regulate products identified as sensitive, for which, for instance, longer transitional periods which should not exceed 10 years, or partial liberalisation commitments with a review clause will be foreseen. Any such specific provisions or treatment will be limited to certain sensitive products. For products not subject to full liberalisation commitments, following the application of the Agreement, a clause will consider possibilities for further liberalisation.
10. The Agreement will forbid any ban, restriction or other non-tariff barrier (NTB) to trade, which are not justified by the general exceptions set out below, and which could amount to a means of arbitrary discrimination or a disguised restriction on trade between the parties. Provisions and procedures will be included to ensure the elimination of unjustified non-tariff obstacles to trade. The Agreement will contain provisions concerning the prohibition of fiscal discrimination. Product-specific NTBs should be solved on a request and offer basis, in parallel with exchanges on tariff concessions. Where relevant to further the objectives of the Agreement and to improve market access at a level greater than that delivered through horizontal rules, the Agreement should include sector specific commitments on NTBs. The Agreement will also envisage appropriate domestic procedures to prevent NTBs and other unnecessary obstacles to trade including through transparency in regulations.
11. All customs duties, taxes or charges on exports and quantitative restrictions on exports to the other party which are not justified by exceptions under the Agreement shall be abolished upon the application of the Agreement.
12. Rules of origin  

An Annex setting out ~~simple, modern and~~ development-friendly rules of origin and providing for administrative cooperation and which would take into account the results of the current process of reform of rules of origin will be attached to the Agreement.
13. Anti-fraud measures  

A clause in the Agreement concerning enhanced administrative cooperation will set out the procedures and appropriate measures that the parties may take where a lack of administrative cooperation in customs matters, irregularities or fraud are established.
14. Management of administrative errors  

Provisions should also be included to examine jointly the possibility of adopting appropriate measures in case of errors committed by the competent authorities in the application of the preferential rules of origin.

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15. Technical regulations on industrial products, standards and conformity assessment procedures

Apart from confirming the provisions of the WTO Agreement on Technical Barriers to Trade, the parties shall also establish provisions that facilitate access to each other's markets. The Agreement will contain a number of general principles (such as proportionality, no undue restrictions, transparency, non-discrimination) as set out in the WTO Agreement on Technical Barriers to Trade, to be applied by the parties in their mutual trade. The aim will be to include provisions on the adoption of recognised international standards and on the streamlining of testing requirements in a number of priority sectors. The Agreement will also aim at improving dissemination of information to importers and exporters, developing common views and promoting good regulatory practice, seeking compatibility and convergence of technical regulations and conformity assessment, promoting close co-operation with and between relevant organisations responsible for standardisation and accreditation.

16. Sanitary and phytosanitary measures

On sanitary and phytosanitary measures, the conditions negotiated shall follow the provisions of the negotiating directives adopted by the Council on 20 February 1995 (Council document 4976/95). Furthermore, the Agreement will refer to a number of general principles of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures including proportionality, undue delays, transparency and non-discrimination, to be applied by the parties in their mutual trade, with the objective of facilitating access to each party's market while safeguarding public, animal and plant health.

The Agreement should in particular seek to achieve full transparency as regards sanitary and phytosanitary measures applicable to trade, work towards the establishment of a reciprocal mechanism for recognition of equivalence including the pre-listing of food-producing establishments, and work towards recognition of disease-free health status of the parties and the principle of regionalisation for both animal and plant diseases, while maintaining essential minimal checks at the external border. Animal welfare shall be within its scope.

17. General exceptions

The Agreement will include a general exception clause based on of Articles XX and XXI of GATT.

18. Safeguards

To maximise liberalisation commitments, the Agreement will contain a bilateral agricultural safeguard clause by which either party may restore Most Favoured Nation (MFN) duties where a rise in imports of a product from the other party is causing or threatening to cause serious injury to its domestic industry.

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## 19. Anti-dumping and countervailing measures

The Agreement will include a clause on anti-dumping and countervailing measures providing that any of the parties may take appropriate measures against dumping and/or countervailable subsidies in accordance with the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 or the WTO Agreement on Subsidies and Countervailing Measures. The Agreement will also integrate commitments that go beyond WTO rules in this area in line with EC rules and previous agreements (e.g. public interest test and lesser-duty rule, additional consultations).

### TITLE 3: TRADE IN SERVICES, ESTABLISHMENT

## 20. [The Agreement shall provide for the progressive and reciprocal liberalisation of establishment and of trade in services with the aim to ensure a high level of market access opportunities, consistent with the relevant WTO rules, in particular Article V of the GATS.

While respecting Article V of the GATS, the commitments made by the EC shall not include:

- National maritime cabotage, and
- Air services, including domestic and international air transportation services whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - i. Aircraft repair and maintenance services during which an aircraft is withdrawn from service,
  - ii. Selling and marketing of air transport services,
  - iii. Computer reservation system (CRS) services, and
  - iv. Other ancillary services that facilitate the operations of air carriers.
- Mining, manufacturing and processing of nuclear materials;
- Production of or trade in arms, munitions and war materials.

The services supplied in the exercise of governmental authority as defined by Article I-3 of the GATS shall be excluded from these negotiations.]<sup>3</sup>

## 20. bis Audio-visual and other cultural services will be treated in a specific audio-visual and cultural co-operation framework. In developing this co-operation framework, the parties will maintain the possibility to preserve and develop their capacity to define and implement their cultural and audio-visual policies for the purpose of preserving their cultural diversity, while promoting cultural and audio-visual exchanges and favouring inter-cultural dialogue.

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<sup>3</sup> BE: scrutiny reservation.

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21. Respecting the respective competences of the EC and its Member States, the parties shall agree to establish a framework for establishment, which will be based on principles of transparency, non-discrimination, market access, stability and on general principles of protection, based on the Minimum Platform on Investment for EU FTAs, as agreed within the framework of the Article 133 Committee (doc. St 15375/06).

Within this framework, the parties shall agree to grant treatment no less favourable for the establishment in their territory of the companies, subsidiaries or branches of the other party than that accorded to their own companies, subsidiaries or branches, taking due account of the sensitive nature of certain specific sectors.

Nothing in this framework shall be taken to limit the rights of investors of the parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Community and India are Parties.

22. [The negotiations shall address barriers to market access and limitations on national treatment across all economic sectors and modes of supply, taking due account of the sensitive nature of certain specific sectors; they shall also aim to establish regulatory disciplines needed to underpin and facilitate trade.]<sup>4</sup>
23. EU investors and service suppliers shall be granted at least parity with the treatment granted to investors and service suppliers of any third country as regards cross-border supply of services and establishment.
24. The Agreement will not preclude the enforcement of exceptions on the supply of services justifiable under the relevant WTO rules (Articles XIV and XIV bis GATS). The Commission should also ensure that nothing in the Agreement should prevent the Parties from applying their national laws, regulations and requirements regarding entry and stay, work and labour conditions provided that, in doing so, they do not nullify or impair the benefits accruing from the Agreement.

## TITLE 4: PUBLIC PROCUREMENT

25. The Agreement shall provide for a set of binding rules including adequate transparency provisions that support the setting up of effective procurement systems. They will also provide for challenge procedures and cooperation in the field of electronic procurement. To the extent appropriate, the procurement chapter should be consistent with the revised Government Procurement Agreement. The Agreement will envisage the progressive liberalisation of procurement markets at national, regional and, where appropriate, local levels, as well as in the field of public utilities, in particular in priority sectors. The agreement will envisage gradual and mutual market access on the basis of the principles of non-discrimination and national treatment.

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<sup>4</sup> BE: scrutiny reservation.

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## TITLE 5: TRADE AND COMPETITION

26. The Agreement shall include provisions on competition addressing effective competition rules and their enforcement.
27. These provisions shall identify anti-competitive behaviour that would be considered incompatible with the proper functioning of the Agreement to the extent that it affects trade between the parties, and include rules on restrictive agreements and concerted practices between undertakings, abuse of dominant position, mergers and state aid.
28. The provisions on competition shall address the appropriate legal framework and bodies in charge of implementation of competition rules to guarantee a transparent and an effective enforcement of their respective competition rules.
29. In order to facilitate reciprocal consultations and exchange of non-confidential information between the parties, provisions on appropriate co-operation in the field of trade and competition could be considered.

## TITLE 6: INTELLECTUAL PROPERTY RIGHTS

30. The Agreement will include rules to ensure effective and adequate protection and enforcement of intellectual property rights (IPR). The Agreement shall include commitments to adhere to multilateral agreements in this field, and well developed elements on recognition, protection and effective enforcement of rights including on geographical indications and fight against counterfeiting and piracy. The Agreement shall contain provisions effectively recognising and protecting ex officio geographical indications, including the phasing out of generic denominations.

## TITLE 7: CAPITAL MOVEMENT AND PAYMENTS

31. The Agreement will strive for full liberalisation of current payments and capital movement, and include a standstill clause. It will entail carve-out provisions (e.g. in case of serious difficulties for monetary and exchange rate policy, or for prudential supervision, or taxation), which will be in accordance with the provisions of the EC Treaty on free movement of capital. Negotiations shall take into account the sensitivities attached to the liberalisation of capital movement not linked to direct investment.

## TITLE 8: CUSTOMS AND TRADE FACILITATION

32. The Agreement shall include provisions to facilitate trade between the parties, while ensuring effective controls. To this end it shall include commitments on rules, requirements, formalities and procedures of the parties related to import, export and transit.

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33. The Agreement shall promote the effective implementation and application of international rules and standards in the field of customs and other trade-related procedures, including WTO provisions and World Customs Organisation instruments, inter alia, the revised Kyoto Convention. It shall also promote effective regional transit arrangements.

The Agreement shall include provisions to promote the exchange of best practice and experience, relating to particular areas of mutual interest. These areas may include issues such as modernisation and simplification of rules and procedures, standardised documentation, tariff classification, transparency, and inter-agency co-operation. The Agreement shall promote convergence in the trade facilitation field, building on relevant international standards and instruments as appropriate.

34. The Agreement shall promote effective and efficient IPR enforcement by customs authorities, regarding imports, exports, re-exports, transshipments and other customs procedures, and in particular as regards counterfeit goods.
35. The Agreement should take into account the existing Agreement on Customs Co-operation and Mutual Administrative Assistance in Customs Matters between the EC and India and draw upon existing cooperation mechanisms.

## TITLE 9: TRADE AND SUSTAINABLE DEVELOPMENT

36. The Agreement will include commitments by both sides in terms of the social and environmental aspects of trade and sustainable development. The Agreement will include provisions to promote adherence to and effective implementation of internationally agreed standards in the social and environmental domain as a necessary condition for sustainable development. The Agreement will also include mechanisms to support the promotion of decent work through effective domestic implementation of International Labour Organization (ILO) core labour standards, as defined in the 1998 ILO Declaration of Fundamental Principles and Rights at Work as well as enhancing cooperation on trade-related aspects of sustainable development. Consideration will also be given to measures to facilitate and promote trade in environmental goods, services and technology. The Agreement will foresee the monitoring of the implementation of these commitments and the social and environmental impacts of the Agreement through, inter alia, review and public scrutiny as well as instruments of encouragement and trade related co-operation activities, including with relevant international fora.

## TITLE 10: TRANSPARENCY OF REGULATIONS

37. The Agreement will include provisions regarding:
- The commitment to consult stakeholders in advance of the introduction of regulations with an impact on trade;
  - The publication of, and public consultations on, all general rules with an impact on international trade in goods and services;

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- The procedures to avoid trade problems arising from regulations at an early stage;
  - Transparency as regards the administration, implementation and application of regulations having an impact on international trade in goods or services, including appropriate review procedures;
  - The creation of enquiry points and one-stop shops designed to provide specific information and to respond promptly to questions and enquiries regarding the operation of the Agreement.
- ~~— Commitment to recognise and take steps to implement the principles of good governance in financial and tax areas relating to trade such as transparency and exchange of information, where appropriate and without prejudice to EU Member States' competences.<sup>5</sup>~~

## TITLE 11: INSTITUTIONAL FRAMEWORK AND FINAL PROVISIONS

38. A clear legal and institutional link shall be established between the Agreement and the existing Cooperation Agreement with India<sup>6</sup>. This will ensure the external coherence in particular in respect of the existence, application, suspension and termination of the respective provisions. As regards the institutional framework, trade and non-trade provisions will be administered by the same institutional set-up.
39. The Agreement will set up a specific Trade Commission to monitor the implementation of the Agreement. Committees on specific areas may be established as appropriate and will operate under the framework of the Trade Commission. The Trade Commission shall report to the Joint Commission established under the 1994 EC-India Cooperation Agreement.

### Dispute settlement

40. The Agreement will include an appropriate and well-functioning dispute settlement mechanism, which will ensure that the parties observe mutually agreed rules.
41. The Agreement will include provisions for expedient problem-solving such as a flexible mediation mechanism. This mechanism would be without prejudice to the parties' rights and obligations or to dispute settlement provided for under the Agreement.

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<sup>5</sup> The Commission noted the unanimous agreement of Member States to delete this indent but maintained a reservation.

The UK delegation stated that the deletion of this indent is a prerequisite for its final agreement to the draft negotiating directives.

<sup>6</sup> Cooperation Agreement between the EC and the Republic of India on partnership and development (OJ L 23, 27.8.1994, p.24).

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ANNEX 3

**Draft**

## RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

**authorising the Commission to negotiate a free trade agreement with the Republic of Korea  
on behalf of the European Community and its Member States**

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## 1. EXPLANATORY MEMORANDUM

### 1. BACKGROUND

#### 1.1. EU policy on Free Trade Agreements

The Commission's Communication "Global Europe: competing in the world"<sup>1</sup> reviewed the contribution of EU trade policy to the European growth and jobs strategy. It confirmed the EU's commitment to the World Trade Organisation (WTO) as the single most effective means of expanding and managing trade for the benefit of all. It stressed that the Doha Development Agenda (DDA) remains the EU's first priority and that we will work hard to resume negotiations. The Communication also argued that the EU should build on the platform created by the WTO to generate new opportunities for growth by opening markets further to trade and investment. The Communication set out a series of linked trade policy initiatives complementing efforts to resume negotiations in the WTO. As part of these initiatives, it proposed to negotiate carefully chosen comprehensive Free Trade Agreements (FTA).

FTAs, if approached with care, can go further and faster in promoting openness and integration, by tackling issues which are not ready for multilateral discussion. The Communication stressed that we should continue to factor in other issues and the wider role of trade policy in EU external relations into bilateral trade developments. But in order for trade policy to help create jobs and drive growth, economic factors must play a primary role in the choice of future FTAs. The key economic criteria for new FTA partners should be market potential (economic size and growth) and the level of protection against EU export interests (tariffs and non-tariff barriers), while taking account of our potential partners' negotiations with EU competitors.

In terms of content, new competitiveness-driven FTAs would need to be comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation including far-reaching liberalisation of services and investment. Future FTAs would also need new ways of addressing non-tariff barriers and incorporating provisions on trade-related aspects of sustainable development.

The Communication stresses the need to ensure that we share similar ambitions with our prospective partners at the outset in order to avoid negotiations later stalling due to a mismatch of expectations.

On 13 November 2006, the Council of the European Union concluded that it supports the early launch of negotiations with countries of ASEAN<sup>2</sup>, India, and the Republic of Korea (hereafter "South Korea"), and invited the Commission to submit proposals for the negotiating directives without delay.

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<sup>1</sup> COM(2006) 567, "Global Europe: competing in the world", 4 October 2006.

<sup>2</sup> The Association of South East Asian Nations

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## 1.2. EU-South Korea Relations

Over the past decade, South Korea has steadily established itself as a valuable partner for the EU, both economically and politically. On the back of its rapid, export-led economic growth in recent decades, the country has been transformed from one of the world's poorest developing countries, devastated by the 1950-3 Korean war, to being one of the world's foremost trading powers and largest national economies (GDP larger than Brazil or India). In political terms, with the consolidation of civilian government and multi-party democracy since the first half of the 1990s, South Korea shares important core values with the EU. Moreover, the continued division of the Korean Peninsula and proliferation concerns surrounding the North's nuclear and missile programmes mean that South Korea finds itself in the middle of one of the world's tensest geopolitical stand-offs, in which not only South Korea itself but also key strategic partners of the EU - the US, China and Japan - all have vital security interests at stake.

Although it is already the EU fourth largest trading partner outside Europe, there is still a large potential to be exploited to facilitate and expand bilateral trade. It is one of the countries where the gap between the actual position of EU producers and their usual position in comparable countries is the most important. Indeed, it accounts for only 2.4% of EU exports, while it accounts for 3.3% of the external demand.

Current EU-South Korea trade relations are governed by Framework Agreement on Trade and Co-operation signed in October 1996 and entered into force on 1 April 2001 (hereafter "Framework Agreement"). Being non-preferential in nature, the Framework agreement in itself offers modest scope for applying pressure or offering positive incentives to address market access barriers and specific trade irritants. There has therefore been limited progress in dealing with a wide range of long-standing issues, many of which are regulatory in nature. Negotiation of an FTA with South Korea would provide considerable scope for making progress in resolving many such issues.

South Korea fully meets the criteria for negotiating an FTA set out in the "Global Europe: Competing in the World" communication. It is one of the few countries combining a sizeable market, high economic growth and substantial tariff and non-tariff barriers to trade against EU interests. It is also rapidly opening its markets to EU competitors, which puts EU positions at risk. As demonstrated by its negotiations with third countries and by the exploratory talks held with the EU, South Korea aims at deep and wide FTAs and shares EU level of ambition as regards potential negotiations. A comprehensive FTA with South Korea would secure our positions and bring significant market opportunities for the EU.

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## 2. NATURE AND SCOPE OF THE AGREEMENT

A comprehensive FTA with South Korea should aim to improve market access for goods and services, covering substantially all trade. It should provide for enhanced provisions on trade in goods and services, including binding provisions on regulatory transparency in areas relevant for mutual trade and investment, standards and conformity assessment, sanitary and phytosanitary rules, intellectual property rights including enforcement, trade facilitation and customs, public procurement, and trade and competition including state aid. It should also provide for co-operation on trade and sustainable development, including both its environmental and social dimensions. In going above and beyond the existing commitments in the WTO, the FTA should be fully WTO-compliant, in particular, with Article XXIV of the General Agreement on Tariffs and Trade (GATT) and Article V of the General Agreement on Trade in Services (GATS). The comprehensive FTA will complement the Framework Agreement to which it would be legally and institutionally linked

This approach is in line with the "Global Europe" strategy, which underlines that new competitiveness-driven FTAs would need to be comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation, including far-reaching liberalisation of services and investment.

## 3. PREPARATION OF THE DRAFT NEGOTIATING DIRECTIVES

Consultations with Member States, EU institutions, civil society (including European business) have taken place for the preparation of the draft negotiating directives, as well as for the accompanying impact assessment for an FTA with South Korea.. These consultations were undertaken in the context of the future orientations for EU trade policy, the related adaptation of its FTAs strategy and the specific prospects for an FTA with South Korea.

The Commission has drafted an impact assessment which analyses the possible impact of an FTA with South Korea. A more detailed Sustainability Impact Assessment (SIA) examining the Agreement's potential economic, social and environmental effects will be conducted in parallel with the negotiations.

## 4. PROCEDURES

The objective is to complete these negotiations no later than two years after their effective start. In line with normal practice, the Commission will report regularly to Member States in the appropriate committees of the Council on progress in the negotiations.

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## 2. RECOMMENDATION

In light of the above, the Commission recommends that:

- the Council authorises the Commission to negotiate, on behalf of the European Community and its Member States, a Free Trade Agreement with South Korea;
- the Council appoints a special Committee (133) to assist it in this task;
- the Council issues the attached negotiating directives.

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## ANNEX

### DIRECTIVES FOR THE NEGOTIATION OF A FREE TRADE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES AND THE REPUBLIC OF KOREA

#### NATURE AND SCOPE OF THE AGREEMENT

1. The Free Trade Agreement (FTA) will exclusively contain trade provisions applicable between the parties. Other issues will be regulated in the existing agreements or any future agreement with South Korea.
2. The Agreement shall be comprehensive, balanced, and fully consistent with World Trade Organisation (WTO) rules and obligations. **The Doha round remains the priority of the EU. The negotiations will be conducted and concluded with due regard to commitments under WTO.**
3. The Agreement shall provide for the progressive and reciprocal liberalisation of trade in goods and services as well as rules on trade-related issues.

#### PREAMBLE AND GENERAL PRINCIPLES

4. The preamble will recall that the partnership with South Korea is based on common principles and values as reflected in the Framework Agreement, and will also refer, inter alia, to:
  - The commitment of the parties to sustainable development and the contribution of international trade to sustainable development in its economic, social and environmental dimensions, including economic development, poverty reduction, full and productive employment and decent work for all as well as the protection and preservation of the environment and natural resources;
  - The commitment of the parties to an FTA in full compliance with their rights and obligations arising out of the WTO;
  - The right of the parties to take measures necessary to achieve legitimate public policy objectives on the basis of the level of protection that they deem appropriate, provided that such measures do not constitute a means of unjustifiable discrimination or a disguised restriction of international trade;
  - The belief that the FTA will create a new climate for trade relations between the two parties and above all for the development of trade and investment;
  - The commitment of the parties to communicate with all relevant interested parties, including the private sector and civil society organisations.

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## STRUCTURE AND ORGANISATION OF NEGOTIATIONS

4bis. The Commission shall conduct the negotiations in consultation with the Article 133 Committee. The Commission shall report regularly to this committee and other relevant Committees on the progress of the negotiations.

On matters falling within their competence Member States may attend the negotiating sessions and will be consulted for the establishment of negotiating documents, through the Ad Hoc Article 133 Committee (Services) and the Article 133 Committee (Deputies)

## TITLE 1: OBJECTIVES

5. The Agreement shall confirm the joint objective of progressively and reciprocally liberalising substantially all trade in goods and services, in full compliance with WTO rules.
6. The Agreement will recognise that sustainable development is an overarching objective of the parties and will aim at ensuring and facilitating respect of international environmental and social agreements and standards. The Agreement will recognise that the parties shall not encourage foreign direct investment by lowering domestic environmental, labour or occupational health and safety legislation, and standards or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity.

The Agreement's economic, social and environmental impacts will be examined by means of an independent Sustainability Impact Assessment (SIA), which the Commission shall undertake in parallel with the negotiations and which will be finalised ahead of signature of any final Agreement. The SIA will aim to clarify the likely effects of the Agreement on sustainable development on both sides, and the potential impact on LDCs and neighbouring poor and vulnerable countries as well as to propose measures (trade or non trade) to maximise the benefits of the agreement and prevent or minimise potential negative impacts. There will be a specific chapter of the Agreement on trade and sustainable development, including both social and environmental issues, and addressing such measures. Sustainable development will also be taken into account throughout the Agreement.

## TITLE 2: TRADE IN GOODS

7. Duties on imports and exports and non-tariff measures

The aim of the Agreement will be to dismantle import duties and charges having an equivalent effect on both sides within 7 years with a view to offering similar market access opportunities on both sides at the end of this period. The Agreement will cover substantially all trade in goods between the parties. The aim will be to ensure the highest possible degree of trade liberalisation.

# RESTREINT UE

Negotiations on tariff reduction shall take place on the basis of the duties applied by the EC erga omnes on the date of launch of negotiations and the external tariff applied by South Korea erga omnes on the date of launch of negotiations. As from the first day of the start of the negotiations, the Parties shall agree that any increase in tariff duties shall not be taken into account during the negotiations.

8. The Agreement shall provide for a maximum of frontloading of full liberalisation commitments, taking into account the importance of ensuring to the maximum extent feasible parity with FTAs being negotiated by South Korea with other major trading partners.
9. Specific provisions will regulate products identified as sensitive, for which, for instance longer transitional periods which should not exceed 10 years, or partial liberalisation commitments with a review clause will be foreseen. Any such specific provisions or treatment will be limited to certain sensitive products. For products not subject to full liberalisation commitments, following the application of the Agreement, a clause will consider possibilities for further liberalisation.
10. The Agreement will forbid any ban, restriction or other non tariff barriers (NTB) to trade, which is not justified by the general exceptions set out below, and which could amount to a means of arbitrary discrimination or a disguised restriction on trade between the parties. Priority shall be given to provisions and procedures that will be included to ensure the elimination of unjustified non-tariff obstacles to trade. The Agreement will contain provisions concerning the prohibition of fiscal discrimination. Product-specific NTBs shall be solved on a request and offer basis, in parallel with exchanges on tariff concessions. Where relevant to further the objectives of the Agreement and to improve market access at a level greater than that delivered through horizontal rules, the Agreement should include sector specific commitments on NTBs. The Agreement will also envisage appropriate domestic procedures to prevent NTBs and other unnecessary obstacles to trade including, through transparency in regulations.
11. All customs duties, taxes or charges on exports and quantitative restrictions on exports to the other party which are not justified by exceptions under the Agreement shall be abolished upon the application of the Agreement.
12. Rules of origin  

An annex setting out ~~simple and modern~~ rules of origin and providing for administrative co-operation and which would take into account the results of the current process of reform of rules of origin will be attached to the Agreement.
13. Anti-fraud measures  

A clause in the Agreement concerning enhanced administrative co-operation will set out the procedures and appropriate measures that the parties may take where a lack of administrative co-operation in customs matters, irregularities or fraud are established.

# RESTREINT UE

## 14. Management of administrative errors

Provisions should also be included to examine jointly the possibility of adopting appropriate measures in case of errors committed by the competent authorities in the application of the preferential rules of origin.

## 15. Technical regulations on industrial products, standards and conformity assessment procedures

Apart from confirming the provisions of the WTO Agreement on Technical Barriers to Trade, the parties shall also establish provisions that facilitate access to each other's markets. The Agreement will contain a number of general principles (such as proportionality, no undue restrictions, transparency, non-discrimination) as set out in the WTO Agreement on Technical Barriers to Trade, to be applied by the parties in their mutual trade. The aim will be to include provisions on the adoption of recognised international standards and on the streamlining of testing requirements in a number of priority sectors. The Agreement will also aim at improving dissemination of information to importers and exporters, developing common views and promoting good regulatory practice, seeking compatibility and convergence of technical regulations and conformity assessment, promoting close co-operation with and between relevant organisations responsible for standardisation and accreditation.

## 16. Sanitary and phytosanitary measures

On sanitary and phytosanitary measures, the conditions negotiated shall follow the provisions of the negotiating directives adopted by the Council on 20 February 1995 (Council document 4976/95). Furthermore, the Agreement will refer to a number of general principles of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures including proportionality, undue delays, transparency and non-discrimination, to be applied by the parties in their mutual trade, with the objective of facilitating access to each other's market while safeguarding public, animal and plant health.

The Agreement should in particular seek to achieve full transparency as regards sanitary and phytosanitary measures applicable to trade, work towards the establishment of a reciprocal mechanism for recognition of equivalence including the pre-listing of food-producing establishments, and work towards recognition of disease-free health status of the parties and the principle of regionalisation for both animal and plant diseases, while maintaining essential minimal checks at the external border. Animal welfare shall be within its scope.

## 17. General exceptions

The Agreement will include a general exception clause based on Articles XX and XXI GATT.

# RESTREINT UE

## 18. Safeguards

To maximise liberalisation commitments, the Agreement ~~will~~ **may** contain a bilateral ~~agricultural~~ safeguard clause by which either party may restore most-favoured-nation duties where a rise in imports of a product from the other party is causing or threatening to cause serious injury to its domestic industry.

## 19. Anti-dumping and countervailing measures

The Agreement will include a clause on anti-dumping and countervailing measures providing that any of the parties may take appropriate measures against dumping and/or countervailable subsidies in accordance with the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or the WTO Agreement on Subsidies and Countervailing Measures. The Agreement will also integrate commitments that go beyond WTO rules in this area in line with EC rules and previous agreements (e.g. public interest test and lesser-duty rule, additional consultations).

### TITLE 3: TRADE IN SERVICES, ESTABLISHMENT

20. [The Agreement shall provide for the progressive and reciprocal liberalisation of establishment and of trade in services with the aim to ensure a high level of market access opportunities, consistent with the relevant WTO rules, in particular Article V of the GATS.

While respecting Article V of the GATS, the commitments made by the EC shall not include:

- National maritime cabotage, and
- Air services, including domestic and international air transportation services whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - i. Aircraft repair and maintenance services during which an aircraft is withdrawn from service,
  - ii. Selling and marketing of air transport services,
  - iii. Computer reservation system (CRS) services, and
  - iv. Other ancillary services that facilitate the operations of air carriers.
- Mining, manufacturing and processing of nuclear materials;
- Production of or trade in arms, munitions and war materials.

# RESTREINT UE

The services supplied in the exercise of governmental authority as defined by Article I-3 of the GATS shall be excluded from these negotiations.]<sup>3</sup>

20. bis Audio-visual and other cultural services will be treated in a specific audio-visual and cultural co-operation framework. In developing this co-operation framework, the parties will maintain the possibility to preserve and develop their capacity to define and implement their cultural and audio-visual policies for the purpose of preserving their cultural diversity, while promoting cultural and audio-visual exchanges and favouring inter-cultural dialogue.
21. Respecting the respective competences of the EC and its Member States, the parties shall agree to establish a framework for establishment, which will be based on principles of transparency, non-discrimination, market access, stability and on general principles of protection, based on the Minimum Platform on Investment for EU FTAs, as agreed within the framework of the Article 133 Committee (doc. St 15375/06).

Within this framework, the parties shall agree to grant treatment no less favourable for the establishment in their territory of the companies, subsidiaries or branches of the other party than that accorded to their own companies, subsidiaries or branches, taking due account of the sensitive nature of certain specific sectors.

Nothing in this framework shall be taken to limit the rights of investors of the parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Community and South Korea are Parties.

22. [The negotiations shall address barriers to market access and limitation on national treatment across all economic sectors and modes of supply, taking due account of the sensitive nature of certain specific sectors; they shall also aim to establish regulatory disciplines needed to underpin and facilitate trade.]<sup>4</sup>
23. EU investors and service suppliers shall be granted at least parity with the treatment granted to investors and service suppliers of any third country as regards cross-border supply of services and establishment.
24. The Agreement will not preclude the enforcement of exceptions on the supply of services justifiable under the relevant WTO rules (Articles XIV and XIV bis GATS). The Commission should also ensure that nothing in the Agreement should prevent the Parties from applying their national laws, regulations and requirements regarding entry and stay, work and labour conditions provided that, in doing so, they do not nullify or impair the benefits accruing from the Agreement.

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<sup>3</sup> BE: scrutiny reservation.

<sup>4</sup> BE: scrutiny reservation.

# RESTREINT UE

## TITLE 4: PUBLIC PROCUREMENT

25. The Agreement should aim for maximum ambition complementing the Government Procurement Agreement in terms of coverage (sectors and entities, thresholds, utilities, services contracts). The Agreement will envisage mutual access on a national treatment basis to public procurement markets at national, regional and local level for public contracts and works concessions in the traditional sector as well as in the field of public utilities. Market access provisions will extend to the relevant bodies governed by public law; public undertakings in the field of utilities.

## TITLE 5: TRADE AND COMPETITION

26. The Agreement shall include provisions on competition addressing competition rules and their enforcement.
27. These provisions shall identify anti-competitive behaviour that would be considered incompatible with the proper functioning of the Agreement to the extent that it affects trade between the parties, and include rules on restrictive agreements and concerted practices between undertakings, abuse of dominant position, mergers and state aid.
28. The provisions on competition should address the appropriate legal framework and bodies in charge of implementation of competition rules to guarantee a transparent and effective enforcement of their respective competition rules.
29. The Agreement will refer to the intention of the parties to further reinforce co-operation in the field of antitrust and merger control through the negotiation of a specific agreement.

## TITLE 6: INTELLECTUAL PROPERTY RIGHTS

30. The Agreement will include rules to ensure effective and adequate protection and enforcement of intellectual property rights (IPR). The Agreement shall include commitments to adhere to multilateral agreements in this field, and well developed elements on recognition, protection and effective enforcement of rights including on geographical indications and fight against counterfeiting and piracy. The Agreement shall contain provisions effectively recognising and protecting ex officio geographical indications, including the phasing out of generic denominations.

## TITLE 7: CAPITAL MOVEMENT AND PAYMENTS

31. The Agreement will strive for full liberalisation of current payments and capital movements, and include a standstill clause. It will entail carve-out provisions (e.g. in case of serious difficulties for monetary and exchange rate policy, or for prudential supervision, or taxation), which will be in accordance with the provisions of the EC Treaty on the free movement of capital. Negotiations shall take into account the sensitivities attached to the liberalisation of capital movements not linked to direct investment.

# RESTREINT UE

## TITLE 8: CUSTOMS AND TRADE FACILITATION

32. The Agreement shall include provisions to facilitate trade between the parties, while ensuring effective controls. To this end it shall include commitments on rules, requirements, formalities and procedures of the parties related to import, export and transit.
33. The Agreement shall promote the effective implementation and application of international rules and standards in the field of customs and other trade-related procedures, including WTO provisions and World Customs Organisation instruments, inter alia, the revised Kyoto Convention. It shall also promote effective regional transit arrangements.

The Agreement shall include provisions to promote the exchange of best practice and experience, relating to particular areas of mutual interest. These areas may include issues such as modernisation and simplification of rules and procedures, standardised documentation, tariff classification, transparency, and inter-agency co-operation. The Agreement shall promote convergence in the trade facilitation field, building on relevant international standards and instruments as appropriate.

34. The Agreement shall promote effective and efficient IPR enforcement by customs authorities, regarding imports, exports, re-exports, transshipments and other customs procedures, and in particular as regards counterfeit goods.
35. The Agreement should take into account the existing Agreement between the European Community and the Republic of Korea on co-operation and mutual administrative assistance in customs matters and draw upon existing co-operation mechanisms.

## TITLE 9: TRADE AND SUSTAINABLE DEVELOPMENT

36. The Agreement will include commitments by both sides in terms of the social and environmental aspects of trade and sustainable development. The Agreement will include provisions to promote adherence to and effective implementation of internationally agreed standards in the social and environmental domain as a necessary condition for sustainable development. The Agreement will also include mechanisms to support the promotion of decent work through effective domestic implementation of International Labour Organisation (ILO) core labour standards, as defined in the 1998 ILO Declaration of Fundamental Principles and Rights at Work as well as enhancing co-operation on trade-related aspects of sustainable development. Consideration will also be given to measures to facilitate and promote trade in environmental goods, services and technology. The Agreement will foresee the monitoring of the implementation of these commitments and of the social and environmental impacts of the Agreement through inter alia review and public scrutiny, as well as instruments of encouragement and trade related co-operation activities, including with relevant international fora.

# RESTREINT UE

## TITLE 10: TRANSPARENCY OF REGULATIONS

37. The Agreement will include provisions regarding:
- The commitment to consult stakeholders in advance of the introduction of regulations with an impact on trade;
  - The publication of, and public consultations on, all general rules with an impact on international trade in goods and services;
  - The procedures to avoid trade problems arising from regulations at an early stage
  - Transparency as regards the administration, implementation and application of regulations having an impact on international trade in goods or services, including appropriate review procedures;
  - The creation of enquiry points and one-stop shops designed to provide specific information and to respond promptly to questions and enquiries regarding the operation of the Agreement.
- ~~— Commitment to recognise and take steps to implement the principles of good governance in financial and tax areas relating to trade such as transparency and exchange of information, where appropriate and without prejudice to EU Member States' competences.<sup>5</sup>~~

## TITLE 11: INSTITUTIONAL FRAMEWORK AND FINAL PROVISIONS

38. A clear legal and institutional link shall be established between the Agreement and the existing Framework Agreement or, as necessary, any other future agreement that may be concluded. This will ensure external coherence in particular in respect of the existence, application, suspension and termination of the respective provisions.
39. The Agreement will set up a specific Trade Commission to monitor the implementation of the Agreement. Committees on specific areas may be established as appropriate and will operate under the framework of the Trade Commission. The Trade Commission shall report to the Joint Committee established under the Framework Agreement.

### Dispute settlement

40. The Agreement will include an appropriate and well-functioning dispute settlement mechanism, which will ensure that the parties observe mutually agreed rules.

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<sup>5</sup> The Commission noted the unanimous agreement of Member States to delete this indent but maintained a reservation.

The UK delegation stated that the deletion of this indent is a prerequisite for its final agreement to the draft negotiating directives.

## **RESTREINT UE**

41. The Agreement will include provisions for expedient problem-solving such as a flexible mediation mechanism. This mechanism would be without prejudice to the parties' rights and obligations or to dispute settlement provided for under the Agreement.

DECLASSIFIED

**Recommendation from the Commission to the Council authorising the Commission to open negotiations for the conclusion of an Association Agreement between the European Community and its Member States and the Andean Community and its Member Countries**

## Trade

### NATURE AND SCOPE

The Trade part of the Agreement shall deal comprehensively with all trade components, and be fully consistent with WTO rules and obligations. **The Doha round remains the priority of the EU. The negotiations will be conducted and concluded with due regard to commitments under WTO.** It shall provide for the progressive and reciprocal liberalisation of trade in goods and services, and the establishment of rules on a broad number of trade-related issues as specified below. It shall also provide for progressive and reciprocal liberalisation of conditions for establishment (and liberalisation of current payments and capital movements), and mutual access to public procurement markets.

Given that sustainable development is one of the overarching objectives of the Parties, the provisions relating to trade will aim to ensure and facilitate respect on agreed environmental and social standards; and at maximising any positive and minimising negative environmental and social impacts. The Agreement will recognize that the parties shall not encourage foreign direct investment by lowering domestic environmental, labour or occupational health and safety legislation and standards, or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity. Sustainable development will also be taken into account throughout the trade provisions of the Agreement.

- In order to stimulate and consolidate regional integration efforts in the Andean Community, and to increase the benefits of a regional market – as compared to rather small individual national markets – for EU operators, the Commission will pursue full region-to-region negotiations in all trade and trade-related areas detailed below. Differentiation of Andean Community countries' commitments to the EU should be limited to a minimum and only where a common approach would not be possible in the short term.
- Taking into account different levels of development in the EU and in the Andean Community, region-to-region asymmetries should be considered, where necessary, in all trade and trade-related areas discussed in the course of negotiations, for instance by agreeing to different timings for transitional periods.

Negotiations shall also take into account specific interests of the outermost regions of the EU, for instance by paying particular attention to products that are sensitive for these territories.

### TRADE IN GOODS

The Agreement will aim at dismantling import duties and charges having an equivalent effect on both sides over a period of time not exceeding 10 years. The Agreement will cover substantially all trade in goods between the parties in terms of both tariff lines and the value of trade and it will aim for a maximum of frontloading of full liberalisation commitments taking into account the importance of ensuring, to the extent feasible, parity with Agreements negotiated with other major trading partners.

# RESTREINT UE

Specific provisions will regulate products identified as sensitive, for instance, a longer dismantling period or partial liberalisation commitments will be foreseen. Any such specific provisions or treatment will be limited to certain sensitive products. A review clause will provide scope for further liberalisation for products not subject to full liberalisation commitments, following the entry into force of the overall Agreement, or of a possible Interim Agreement.

As from the first day of the effective start of the negotiations, the Parties shall agree that any increase in tariff duties shall not be taken into account during the negotiations.

- With regard to the tariff lines not harmonised in the Andean Community, the European Community will negotiate a dismantling schedule on the basis of a "common tariff" previously agreed, for this purpose and for each product, by all Andean Community countries. The European Community should aim to negotiate single dismantling timetables for all products, regardless of whether they have been harmonised previously within the Andean Community.

The Harmonized Commodity Description and Coding System shall be used for the classification of goods in trade between the parties.

An annex setting out ~~simple, modern and~~ development friendly rules of origin and containing provisions on administrative cooperation and which would take into account the results of the current process of reform of rules of origin will be attached to the Agreement. The Parties shall agree that products originating in the Principality of Andorra (falling within Chapters 25 to 97) and products originating in the Republic of San Marino will be treated when imported in the Andean Community as if they were originating in the European Community under the rules of origin set out in the Agreement.

The Parties shall agree that goods originating in the European Community within the meaning of the Annex on rules of origin shall circulate freely in the Andean Community as on the first day of application of the overall Agreement, or of a possible Interim Agreement.

All customs duties, taxes or charges on exports and quantitative restrictions on exports to the other party which are not justified by the general exceptions set out below shall be abolished upon the entry into force of the overall Agreement, or of a possible Interim Agreement.

To maximise liberalisation commitments, the Agreement will contain a bilateral agricultural safeguard clause by which either party may restore MFN duties where a rise in imports of a product from the other party is causing or threatening to cause serious injury to its domestic industry, taking also into account the interests of the European Community's outermost regions. This clause will also cover sensitive processed agricultural products not included in annex I of the Treaty.

A specific clause shall set out procedures and appropriate measures that the Parties may take in the event of lack of administrative cooperation in customs and customs-related matters, or if irregularities or fraud are established.

Provisions should also be included to jointly examine the possibility of adopting appropriate measures in case of errors committed by the competent authorities in the application of the preferential rules of origin, ~~where such errors would lead to consequences in terms of import duties.~~

# RESTREINT UE

## NON TARIFF MEASURES

The Agreement will forbid any ban, restriction or other non-tariff barrier (NTB) to trade, which are not justified by the general exceptions set out below, and which could amount to a means of arbitrary discrimination or a disguised restriction on trade between the parties. Provisions and procedures should be included to ensure the elimination of unjustified non-tariff obstacles to trade. The Agreement shall also contain provisions concerning the prohibition of fiscal discrimination.

Product-specific NTBs should be solved on a request and offer basis, in parallel with exchanges on tariff concessions. In order to improve market access at a level greater than that delivered through horizontal rules, the Agreement should include sector-specific commitments on non-tariff barriers. The Agreement should also envisage appropriate domestic procedures to prevent non-tariff barriers and other unnecessary obstacles to trade including through transparency in regulations.

The Agreement will contain a number of general principles (such as proportionality, no undue restrictions, transparency, non-discrimination) as set out in the WTO Agreement on Technical Barriers to Trade to be applied by the parties in their mutual trade. Apart from confirming the provisions of the WTO Agreement on Technical Barriers to Trade, the parties shall also establish provisions that facilitate access to each other's markets. The aim will be to include provisions on the adoption of recognised international standards and on the streamlining of testing requirements in a number of priority sectors. The Agreement will also aim at improving dissemination of information to importers and exporters, developing common views and promoting good regulatory practice, seeking compatibility and convergence of technical regulations and conformity assessments, promoting close co-operation with and between relevant organisations responsible for standardisation and accreditation.

On sanitary and phytosanitary measures, the conditions negotiated shall follow the provisions of the negotiating directives adopted by the Council on 20 February 1995 (Council document 4976/95). Furthermore, the Agreement will refer to a number of general principles of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures including proportionality, undue delays, transparency and non-discrimination, to be applied by the parties in their mutual trade with the objective of facilitating access to each party's market while safeguarding public, animal and plant health.

The Agreement should in particular seek to achieve full transparency as regards sanitary and phytosanitary measures applicable to trade, work towards the establishment of a reciprocal mechanism for recognition of equivalence including the pre-listing of food-producing establishments, and work towards recognition of disease-free health status of the parties and the principle of regionalisation for both animal and plant diseases, while maintaining essential minimal checks at the external border. Animal welfare shall be within its scope.

## TRADE DEFENCE INSTRUMENTS

The Agreement shall include a clause on anti-dumping and countervailing measures providing that any of the parties may take appropriate measures against dumping and/or countervailable subsidies in accordance with the WTO Agreement on Implementation of Article VI of the GATT 1994 or the WTO Agreement on Subsidies and Countervailing Measures.

# RESTREINT UE

The Parties should also agree to commitments that go beyond WTO rules in this area in line with the EC rules and previous bilateral agreements (e.g. public interest test and lesser-duty rule, additional consultations).

## TRADE IN SERVICES AND ESTABLISHMENT

[The Agreement shall provide for the progressive and reciprocal liberalisation of establishment and of trade in services with the aim to ensuring a high level of market access opportunities, consistent with the relevant WTO rules, in particular Article V of the GATS.

Taking into account their levels of development, Andean Community countries will be allowed a certain measure of flexibility in overall terms as well as in individual sectors and sub-sectors. Any transitional period should in principle not exceed 10 years.

While respecting Article V of the GATS, the commitments made by the EU shall not include:

- national maritime cabotage, and
- air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic right, other than:
  - i. aircraft repair and maintenance services during which an aircraft is withdrawn from service,
  - ii. selling and marketing of air transport services,
  - iii. computer reservation system (CRS) services,
  - iv. other ancillary services that facilitate the operations of air carriers,
- mining, manufacturing and processing of nuclear materials, and
- production of or trade in arms, munitions and war materials.

The services supplied in the exercise of governmental authority as defined by Article I-3 of the GATS shall be excluded from these negotiations.] <sup>1</sup>

Audio-visual and other cultural services will be treated in a specific audio-visual and cultural framework. In developing this framework, the Parties will maintain the possibility of preserving and developing their capacity to define and implement their cultural and audio-visual policies for the purpose of preserving their cultural diversity, while promoting cultural and audio-visual exchanges and favouring inter-cultural dialogue, as a complement to cooperation activities as defined in the Cooperation Title.

Respecting the respective competences of the European Community and its Member States, the Parties shall agree to establish a framework for establishment which will be based on principles of transparency, non-discrimination, market access, stability and on general principles of protection, based on the Minimum Platform on Investment for EU FTAs, as agreed within the framework of the Article 133 Committee (doc. St 15375/06)".

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<sup>1</sup> BE scrutiny reservation.

# RESTREINT UE

Within this framework, the parties shall agree to grant treatment no less favourable for the establishment in their territory of the companies, subsidiaries or branches of the other party than that accorded to their own companies, subsidiaries or branches, taking due account of the sensitive nature of certain specific sectors.

Nothing in this framework shall be taken to limit the rights of investors of the parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Community and one or more Andean countries are parties.

[The negotiations shall address barriers to market access and limitations on national treatment across all economic sectors and modes of supply, taking due account of the sensitive nature of certain specific sectors; they shall also aim to establish regulatory disciplines needed to underpin and facilitate trade.]<sup>2</sup>

The negotiations should address market access and national treatment across economic sectors and modes of supply and identify areas in which regulatory disciplines have greater potential to facilitate mutual trade.

Whenever an Andean Community partner has concluded another economic integration agreement with a third country which is not within the Andean Community, EU investors and service suppliers should be granted at least parity with the treatment granted to investors and service suppliers of this third country as regards cross-border supply of services and establishment.

Each agreement will not preclude the enforcement of exceptions on the supply of services justifiable under the relevant WTO rules (Articles XIV and XIV*bis* of the GATS). The Commission should also ensure that nothing in the Agreement should prevent the Parties from applying their national laws, regulations and requirements regarding entry and stay, work and labour conditions provided that, in doing so, they do not nullify or impair the benefits accruing from the Agreement.

## CAPITAL MOVEMENT AND PAYMENTS

The Agreement will strive for full liberalisation of current payments and capital movements, and include a standstill clause. It will entail carve-out provisions (e.g. in case of serious difficulties for monetary and exchange rate policy, or for prudential supervision, or taxation), which will be in accordance with the provisions of the EC Treaty on free movement of capital. Negotiations shall take into account the sensitivities attached to the liberalisation of capital movements not linked to direct investment.

## PUBLIC PROCUREMENT

The Parties shall agree on measures aimed at the progressive liberalisation of their respective procurement markets at all levels of public authorities and public entities, such as in the water, energy and transport sectors. The objective is to achieve reciprocal and gradual market access on the basis of the principles of non-discrimination and national treatment. The Agreement may also support further market opening at regional level between the Andean Community partner countries.

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<sup>2</sup> BE scrutiny reservation.

# **RESTREINT UE**

The Agreement shall provide for a set of binding rules including adequate transparency provisions that support the setting-up of effective procurement systems. They should also provide for timely and effective challenge procedures and cooperation on electronic procurement.

## **TRADE AND COMPETITION**

The Agreement shall include provisions addressing effective competition rules and their enforcement.

These provisions shall identify anti-competitive behaviour that would be considered incompatible with the proper functioning of the Agreement and should include rules on restrictive agreements and concerted practices between undertakings, abuse of dominant position, merger control and state aid, which prevent or lessen competition in the territory of the European Community or the Andean Community, to the extent that they affect trade between the Parties.

The provisions on competition should address the appropriate legal and administrative framework and national bodies in charge of implementing competition rules with a view to ensuring transparent and effective enforcement of their respective competition rules.

## **INTELLECTUAL PROPERTY RIGHTS**

The Agreement shall include provisions to ensure effective and adequate protection and enforcement of intellectual property rights, including detailed elements on the protection and enforcement of intellectual property rights together with commitments to adhere to multilateral agreements in this field.

The Agreement shall contain provisions effectively recognizing and protecting ex officio geographical indications, including the phasing out of generic denominations.

## **CUSTOMS-RELATED MATTERS AND TRADE FACILITATION**

Negotiations shall aim at facilitating border crossing trade while maintaining effective control by including commitments on the Parties' rules, requirements, formalities and procedures for imports, exports and transit.

The outcome of the negotiations shall promote the effective implementation and application of international rules and standards in the field of customs and other trade-related procedures, including WTO provisions and WCO instruments such as the revised Kyoto Convention. It shall also promote effective regional transit arrangements.

The Agreement shall promote effective and efficient IPR enforcement by customs authorities, regarding imports, exports, re-exports, transshipments and other customs procedures, and in particular as regards counterfeit goods.

## **TRADE AND SUSTAINABLE DEVELOPMENT**

The Agreement will include commitments by both sides in terms of the social and environmental aspects of trade and sustainable development.

# RESTREINT UE

The Agreement will include trade provisions to promote the adherence to and effective implementation of internationally agreed standards in the social and environmental domain as a necessary condition for sustainable development. The Agreement would therefore include mechanisms to support positively the effective domestic implementation of International Labour Organisation (ILO) core labour standards, as defined in the 1998 ILO Declaration of Fundamental Principles and Rights at Work, and relevant international environmental standards, as well as enhanced cooperation on trade-related aspects of sustainable development. Consideration will also be given to measures to facilitate and promote trade in environmental goods, services and technology. The Agreement will foresee the monitoring of the implementation of these commitments through inter alia review and public scrutiny as well as instruments of encouragement and trade-related cooperation activities.

The Commission shall undertake an independent Sustainability Impact Assessment (SIA) in parallel with the negotiations and which will be finalised prior to the signature of any final agreement. The SIA will aim to clarifying the likely effects of trade, as a consequence of the agreement, on sustainable development on both sides, as well as to proposing measures to maximise the benefits of the agreement, and prevent or minimise potential negative impacts I this context.

## GENERAL EXCEPTIONS

The Agreement will include a general exception clause based on of Articles XX and XXI of GATT.

## TRANSPARENCY OF REGULATIONS

The Agreement will include provisions on:

- commitment to consulting stakeholders before introducing regulations with an impact on trade;
- publication of and public consultations on all general rules with an impact on international trade in goods and services;
- procedures for seeking to avoid trade problems at an early stage;
- transparency as regards the administration, implementation and application of regulations, including appropriate review procedures;
- the creation of enquiry points and one-stop shops designed to provide specific information and to respond promptly to questions and enquiries by the parties regarding the operation of the Agreement.

## DISPUTE SETTLEMENT

The Agreement will include an appropriate and well-functioning dispute settlement mechanism, which will ensure that the parties observe the mutually agreed trade and trade-related rules.

The Agreement will also include provisions for expedient problem-solving such as a flexible NTB mediation mechanism. This mechanism would be without prejudice to the Parties' rights and obligations or to dispute settlement provided for under the Agreement.

**Recommendation from the Commission to the Council authorising the Commission to open negotiations for the conclusion of an Association Agreement between the European Community and its Member States and the Central American Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama**

## Trade

### NATURE AND SCOPE

The Trade part of the Agreement shall deal comprehensively with all trade components, and be fully consistent with WTO rules and obligations. **The Doha round remains the priority of the EU. The negotiations will be conducted and concluded with due regard to commitments under WTO.** It shall provide for the progressive and reciprocal liberalisation of trade in goods and services, and the establishment of rules on a broad number of trade-related issues as specified below. It shall also provide for progressive and reciprocal liberalisation of conditions for establishment (and liberalisation of current payments and capital movements), and mutual access to public procurement markets.

Given that sustainable development is one of the overarching objectives of the parties, the provisions relating to trade will aim to ensure and facilitate respect on agreed environmental and social standards; and at maximising any positive and minimising negative environmental and social impacts. The Agreement will recognise that the parties shall not encourage foreign direct investment by lowering domestic environmental, labour or occupational health and safety legislation and standards, or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity. Sustainable development will also be taken into account throughout the trade provisions of the Agreement.

- In order to stimulate and consolidate regional integration efforts in Central America, and to increase the benefits of a regional market – as compared to rather small individual national markets – for EU operators, the Commission will pursue full region-to-region negotiations in all trade and trade-related areas detailed below. Differentiation of Central American countries' commitments to the EU should be limited to a minimum and only where a common approach would not be possible in the short term.
- Taking into account different levels of development in the EU and in Central America, region-to-region asymmetries should be considered, where necessary, in all trade and trade-related areas discussed in the course of negotiations, for instance by agreeing to different timings for transitional periods.

Negotiations shall also take into account specific interests of the outermost regions of the EU, for instance by paying particular attention to products that are sensitive for these territories.

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## TRADE IN GOODS

The Agreement will aim at dismantling import duties and charges having an equivalent effect on both sides over a period of time not exceeding 10 years. The Agreement will cover substantially all trade in goods between the parties in terms of both tariff lines and the value of trade and it will aim for a maximum of frontloading of full liberalisation commitments taking into account the importance of ensuring, to the extent feasible, parity with Agreements negotiated with other major trading partners.

- Specific provisions will regulate products identified as sensitive for which, for instance, a longer dismantling period or partial liberalisation commitments. Any such specific provisions or treatment will be limited to certain sensitive products. A review clause will provide scope for further liberalisation for products not subject to full liberalisation commitments, following the entry into force of the overall Agreement, or of a possible Interim Agreement.

As from the first day of the effective start of the negotiations, the Parties shall agree that any increase in tariff duties shall not be taken into account during the negotiations.

With regard to tariff lines not yet harmonised in Central America, the European Community will negotiate a dismantling schedule on the basis of a "common tariff" previously agreed, for this purpose and for each product, by all Central American countries. The European Community should not negotiate an individual dismantling timetable for any product, regardless whether it is covered by the Central American CET or not.

The Harmonized Commodity Description and Coding System shall be used for the classification of goods in trade between the parties.

An annex setting out ~~simple, modern and~~ development friendly rules of origin and containing provisions on administrative cooperation and which would take into account the results of the current process of reform of rules of origin will be attached to the Agreement. The Parties shall agree that products originating in the Principality of Andorra (falling within Chapters 25 to 97) and products originating in the Republic of San Marino will be treated when imported in Central America as if they were originating in the European Community under the rules of origin set out in the Agreement.

The Parties shall agree that goods originating in the European Community within the meaning of the Annex on rules of origin shall circulate freely in all Central America as of the first day of application of the overall Agreement, or of a possible Interim Agreement.

All customs duties, taxes or charges on exports and quantitative restrictions on exports to the other party which are not justified by the general exceptions set out below shall be abolished upon the entry into force of the overall Agreement, or of a possible Interim Agreement.

To maximise liberalisation commitments, the Agreement will contain a bilateral agricultural safeguard clause by which either party may restore MFN duties where a rise in imports of a product from the other party is causing or threatening to cause serious injury to its domestic industry, taking also into account the interests of the European Community's outermost regions. This clause will also cover sensitive processed agricultural products not included in Annex I of the Treaty.

# RESTREINT UE

A specific clause shall set out procedures and appropriate measures that the parties may take in the event of lack of administrative cooperation in customs and customs-related matters, or if irregularities or fraud are established.

Provisions should also be included to jointly examine the possibility of adopting appropriate measures in case of errors committed by the competent authorities in the application of the preferential rules of origin, ~~where such errors would lead to consequences in terms of import duties.~~

## NON-TARIFF MEASURES

The Agreement will forbid any ban, restriction or other non-tariff barrier (NTB) to trade, which are not justified by the general exceptions set out below, and which could amount to a means of arbitrary discrimination or a disguised restriction on trade between the parties. Provisions and procedures should be included to ensure the elimination of unjustified non-tariff obstacles to trade. The Agreement shall also contain provisions concerning the prohibition of fiscal discrimination.

- Product-specific NTBs should be solved on a request and offer basis, in parallel with exchanges on tariff concessions. In order to improve market access at a level greater than that delivered through horizontal rules, the Agreement should include sector-specific commitments on non-tariff barriers. The Agreement should also envisage appropriate domestic procedures to prevent non-tariff barriers and other unnecessary obstacles to trade including through transparency in regulations.

The Agreement will contain a number of general principles (such as proportionality, no undue restrictions, transparency, non-discrimination) as set out in the WTO Agreement on Technical Barriers to Trade to be applied by the parties in their mutual trade. Apart from confirming the provisions of the WTO Agreement on Technical Barriers to Trade, the parties shall also establish provisions that facilitate access to each other's markets. The aim will be to include provisions on the adoption of recognised international standards and on the streamlining of testing requirements in a number of priority sectors. The Agreement will also aim at improving dissemination of information to importers and exporters, developing common views and promoting good regulatory practice, seeking compatibility and convergence of technical regulations and conformity assessments, promoting close co-operation with and between relevant organisations responsible for standardisation and accreditation.

On sanitary and phytosanitary measures, the conditions negotiated shall follow the provisions of the negotiating directives adopted by the Council on 20 February 1995 (Council document 4976/95). Furthermore, the Agreement will refer to a number of general principles of the SPS WTO Agreements including proportionality, undue delays, transparency and non-discrimination, to be applied by the parties in their mutual trade with the objective of facilitating access to each party's market while safeguarding public, animal and plant health.

The Agreement should in particular seek to achieve full transparency as regards sanitary and phytosanitary measures applicable to trade, work towards the establishment of a reciprocal mechanism for recognition of equivalence including the pre-listing of food-producing establishments, and work towards recognition of disease-free health status of the parties and the principle of regionalisation for both animal and plant diseases, while maintaining essential minimal checks at the external border. Animal welfare shall be within its scope.

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## TRADE DEFENCE INSTRUMENTS

The Agreement shall include a clause on anti-dumping and countervailing measures providing that any of the parties may take appropriate measures against dumping and/or countervailable subsidies in accordance with the WTO Agreement on Implementation of Article VI of the GATT 1994 or the WTO Agreement on Subsidies and Countervailing Measures.

The Parties should also agree to commitments that go beyond WTO rules in this area in line with EC rules and previous bilateral agreements (e.g. public interest test and lesser-duty rule, additional consultations).

## TRADE IN SERVICES AND ESTABLISHMENT

[The Agreement shall provide for the progressive and reciprocal liberalisation of establishment and of trade in services with the aim of ensuring a high level of market access opportunities consistent with the relevant WTO rules, in particular Article V of the GATS.

Taking into account their levels of development, Central American countries will be allowed a certain measure of flexibility in overall terms as well as in individual sectors and sub-sectors. Any transitional period should in principle not exceed 10 years.

While respecting Article V of the GATS, the commitments made by the EU shall not include:

- national maritime cabotage, and
- air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - i. aircraft repair and maintenance services during which an aircraft is withdrawn from service,
  - ii. selling and marketing of air transport services,
  - iii. computer reservation system (CRS) services,
  - iv. other ancillary services that facilitate the operations of air carriers,
- mining, manufacturing and processing of nuclear materials, and
- production of or trade in arms, munitions and war materials.

The services supplied in the exercise of governmental authority as defined by Article I-3 of the GATS shall be excluded from these negotiations.

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- Audio-visual and other cultural services will be treated in a specific audio-visual and cultural framework. In developing this framework, the Parties will maintain the possibility of preserving and developing their capacity to define and implement their cultural and audio-visual policies for the purpose of preserving their cultural diversity, while promoting cultural and audio-visual exchanges and favouring inter-cultural dialogue, as a complement to co-operation activities as defined in the Cooperation Title.]<sup>1</sup>

Respecting the respective competences of the European Community and its Member States, the Parties shall agree to establish a framework for establishment which will be based on principles of transparency, non-discrimination, market access, stability and on general principles of protection, based on the Minimum Platform on Investment for EU FTAs, as agreed within the framework of the Article 133 Committee (doc. St 15375/06)".

Within this framework, the parties shall agree to grant treatment no less favourable for the establishment in their territory of the companies, subsidiaries or branches of the other party than that accorded to their own companies, subsidiaries or branches, taking due account of the sensitive nature of certain specific sectors.

Nothing in this framework shall be taken to limit the rights of investors of the parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Community and one or more Central America countries are parties.

[The negotiations shall address barriers to market access and limitations on national treatment across all economic sectors and modes of supply, taking due account of the sensitive nature of certain specific sectors; they shall also aim to establish regulatory disciplines needed to underpin and facilitate trade.]<sup>2</sup>

Where a Central American partner has concluded another economic integration agreement with a third country which is not within the Central American region, EU investors and service suppliers shall be granted at least parity with the treatment granted to investors and service suppliers of this third country as regards cross-border supply of services and establishment.

Each agreement will not preclude the enforcement of exceptions on the supply of services justifiable under the relevant WTO rules (Articles XIV and XIV *bis* of the GATS). The Commission should also ensure that nothing in the Agreement should prevent the Parties from applying their national laws, regulations and requirements regarding entry and stay, work and labour conditions provided that, in doing so, they do not nullify or impair the benefits accruing from the Agreement.

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<sup>1</sup> BE scrutiny reservation.

<sup>2</sup> BE scrutiny reservation.

# RESTREINT UE

## CAPITAL MOVEMENT AND PAYMENTS

The Agreement will strive for full liberalisation of current payments and capital movements, and include a standstill clause. It will entail carve-out provisions (e.g. in case of serious difficulties for monetary and exchange rate policy, or for prudential supervision, or taxation), which will be in accordance with the provisions of the EC Treaty on free movement of capital. Negotiations shall take into account the sensitivities attached to the liberalisation of capital movements not linked to direct investment.

## PUBLIC PROCUREMENT

The Parties shall agree on measures aimed at the progressive liberalisation of their respective procurement markets at all levels of public authorities and public entities, such as in the water, energy and transport sectors. The objective is to achieve reciprocal and gradual market access on the basis of the principles of non-discrimination and national treatment. The Agreement may also support further market opening at regional level between the Central American partner countries.

The Agreement shall provide for a set of binding rules including adequate transparency provisions that support the setting-up of effective procurement systems. They should also provide for timely and effective challenge procedures and cooperation on electronic procurement.

## TRADE AND COMPETITION

The Agreement shall include provisions addressing effective competition rules and their enforcement.

These provisions shall identify anti-competitive behaviour that would be considered incompatible with the proper functioning of the Agreement and should include rules on restrictive agreements and concerted practices between undertakings, abuse of dominant position merger control and state aid which prevent or lessen competition in the territory of the European Community or Central America, to the extent that they affect trade between the Parties.

The provisions on competition should address the appropriate legal and administrative framework and national bodies in charge of implementing competition rules with a view to ensuring transparent and effective enforcement of their respective competition rules.

## INTELLECTUAL PROPERTY RIGHTS

The Agreement shall include provisions to ensure effective and adequate protection and enforcement of intellectual property rights, including detailed elements on the protection and enforcement of intellectual property rights together with commitments to adhere to multilateral agreements in this field.

The Agreement shall contain provisions effectively recognizing and protecting ex officio geographical indications, including the phasing out of generic denominations.

## CUSTOMS-RELATED MATTERS AND TRADE FACILITATION

Negotiations shall aim at facilitating border crossing trade while maintaining effective control by including commitments on the parties' rules, requirements, formalities and procedures for imports, exports and transit.

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The outcome of the negotiations shall promote the effective implementation and application of international rules and standards in the field of customs and other trade-related procedures, including WTO provisions and WCO instruments such as the revised Kyoto Convention. It shall also promote effective regional transit arrangements.

The Agreement shall promote effective and efficient IPR enforcement by customs authorities, regarding imports, exports, re-exports, transshipments and other customs procedures, and in particular as regards counterfeit goods.

## TRADE AND SUSTAINABLE DEVELOPMENT

The Agreement will include commitments by both sides in terms of the social and environmental aspects of trade and sustainable development.

The Agreement will include trade provisions to promote adherence to and effective implementation of internationally agreed standards in the social and environmental domain as a necessary condition for sustainable development. The Agreement would therefore include mechanisms to support positively the effective domestic implementation of International Labour Organization (ILO) core labour standards, as defined in the 1998 ILO Declaration of Fundamental Principles and Rights at Work, and relevant international environmental standards, as well as enhanced cooperation on trade related aspects of sustainable development. Consideration will also be given to measures to facilitate and promote trade in environmental goods, services and technology. The Agreement will foresee the monitoring of the implementation of these commitments through inter alia review and public scrutiny as well as instruments of encouragement and trade related cooperation activities.

The Commission shall undertake an independent Sustainability Impact Assessment (SIA) in parallel with the negotiations and which will be finalized prior to the signature of any final agreement. The SIA will aim to clarifying the likely effects of trade, as a consequence of the agreement, on sustainable development on both sides, as well as to proposing measures to maximize the benefits of the agreement, and prevent or minimise potential negative impacts in this context.

## GENERAL EXCEPTIONS

The Agreement will include exception clause based on of Articles XX and XXI of GATT.

## TRANSPARENCY OF REGULATIONS

The Agreement will include provisions on:

- commitment to consulting stakeholders before introducing regulations with an impact on trade;
- publication of and public consultations on all general rules with an impact on international trade in goods and services;
- procedures for seeking to avoid trade problems at an early stage;
- transparency as regards the administration, implementation and application of regulations, including appropriate review procedures;

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- the creation of enquiry points and one-stop shops designed to provide specific information and to respond promptly to questions and enquiries by the parties regarding the operation of the Agreement.

### **DISPUTE SETTLEMENT**

The Agreement will include an appropriate and well-functioning dispute settlement mechanism, which will ensure that the parties observe the mutually agreed trade and trade-related rules.

The Agreement will also include provisions for expedient problem-solving such as a flexible NTB mediation mechanism. This mechanism would be without prejudice to the parties' rights and obligations or to dispute settlement provided for under the Agreement.

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## **Joint Declaration by the Commission and the Council on the Review Clause**

[In addition to regular consultations with the competent Council Groups on the progress of negotiations with ASEAN/India/Korea/CAN/CA, within 2 years from the launch of each negotiation the Commission will provide a comprehensive report to the Council on the state of play and may make appropriate recommendations. On the basis of this report and possible recommendations, the Council will discuss the state of play and may act as appropriate.]<sup>1</sup>

### **Commission Declaration on sensitive products**

As regards the treatment of sensitive products, a case by case assessment will be undertaken on possible liberalisation modalities. In this regard, no option will be ruled out *a priori*, including the possibility that certain products may be excluded from liberalisation commitments.

### **Declaration by the United Kingdom and Ireland on the Title IV Protocol of the Treaty establishing the European Community**

The United Kingdom and Ireland reserve their position on the application on the Title IV Protocol to the Agreement.

### **Declaration by Hungary on general principles of protection**

[Text will be circulated shortly.]

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<sup>1</sup> Commission: reservation.