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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 April 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 174 final
Subject:	Proposal for a COUNCIL DECISION on the conclusion of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the Accession of Ecuador

Delegations will find attached document COM(2016) 174 final.

Encl.: COM(2016) 174 final



Brussels, 4.4.2016
COM(2016) 174 final

2016/0092 (NLE)

Proposal for a

COUNCIL DECISION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

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

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

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

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

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

The Commission informed EU Member States orally and in writing on the process of the negotiations with Ecuador via the Trade Policy Committee of the Council. The European Parliament has also been regularly informed on developments via its Committee on International Trade (INTA). The complete text resulting from the negotiations was circulated to both institutions.

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

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

Consistency with existing policy provisions in the policy area

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

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

By means of the Protocol of Accession, the Commission reached the objectives set out in the negotiating directives, namely to eliminate high tariffs, tackle technical barriers to trade, liberalise services markets, protect valuable EU geographical indications (GIs), open-up public procurement markets, include commitments on the enforcement of labour and environmental standards and offer effective and swift dispute settlement procedures. The resulting agreement goes well beyond WTO commitments and ensures a level playing field with competitors in the region.

- **Consistency with other Union policies**

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

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this Council decision is the Treaty on the Functioning of the European Union, in particular its Articles 91, 100(2) and 207(4), first subparagraph, in conjunction with Article 218(6)(a), thereof.

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

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

- **Proportionality**

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

- **Choice of the instrument**

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

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

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

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

A detailed Trade Sustainability Impact Assessment (SIA) examining the Agreement's potential economic, social and environmental effects has been conducted and published in October 2009.

- **Regulatory fitness and simplification**

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

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

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

5. OTHER ELEMENTS

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

The Protocol of Accession of Ecuador to the Trade Agreement between the European Union and its Member States, on the one part, and Colombia and Peru on the other part, establishes the necessary modifications to the Trade Agreement to take account of the accession of Ecuador. The Trade Agreement establishes the conditions for EU economic operators to take full advantage of the opportunities and the emerging complementarities between our respective economies. Over the course of its implementation, the Agreement will fully relieve EU exporters of industrial and fisheries products to Ecuador from paying customs duties. It satisfies the criteria established in Article XXIV of the GATT 1994 (to eliminate duties and other restrictive regulations of commerce with respect to substantially all trade between the parties) i.e.: 99.5 % of EU exports are covered (100% of our trade in industrial products in 10

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

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

The Agreement also establishes a set of disciplines which go beyond those agreed in the multilateral framework, notably on intellectual property (e.g. 116 EU geographical indications protected in Ecuador, data protection conditions clarified); sustainable development (the agreement is GSP+ equivalent or above on labour and environmental issues and contains specific commitments on sustainable fisheries); competition (disciplines on monopolies and State Enterprises – transparency obligations on subsidies); technical barriers to trade (WTO+ elements on market surveillance, transparency in regulation procedures and disciplines on labelling and marking); Sanitary and Phytosanitary measures (WTO+ measures on animal welfare, regionalisation, approval of export establishments, on the spot inspections and import checks) among others. In addition, via its accession Ecuador will participate in the Trade Committee as well as in a set of sub-committees which allow for consultations on specific trade concerns under its different titles. A key added value of the agreement is therefore to lock-in and promote – above and beyond those rules that derive from the WTO framework – openness policies and respect for internationally agreed best practices at the domestic level while securing a transparent, non-discriminatory and predictable environment for EU operators and investors in the region. The possibility of the EU to avail itself of the bilateral dispute settlement mechanism foreseen under the agreement will also contribute to this objective.

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

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

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

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

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

- Market Access Subcommittee.
- Agriculture Subcommittee

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

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

- **Explanatory documents (for directives)**

Not applicable.

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

Articles 1 and 2 of the proposal contain provisions on the conclusion of the Protocol on behalf of the Union and on notification in order to express the consent of the European Union to be bound by the Trade Agreement.

Article 3 specifies that the Protocol of Accession must not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals.

Article 4 establishes the date of the entry into force of the Decision.

Proposal for a

COUNCIL DECISION

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,¹

Having regard to the consent of the European Parliament,

Whereas:

- (1) On 19 January 2009 the Council authorised the Commission to negotiate a trade agreement on behalf of the Union with those Member Countries of the Andean Community which shared the aim to reach an ambitious, comprehensive, and balanced trade agreement.
- (2) On 26 June 2012, the Union signed the Trade Agreement between the Union and its Member States, of the one part, and Colombia and Peru, of the other part² ("Trade Agreement"). The Trade Agreement has been provisionally applied since 1 March 2013 for Peru and 1 August 2013 for Colombia.
- (3) Article 329 of the Trade Agreement lays down the provisions whereby other Member Countries of the Andean Community can become Parties to the Trade Agreement.
- (4) On 17 July 2014, the Union and Ecuador concluded their negotiations on the Protocol to take account of the Accession of Ecuador to the Trade Agreement.
- (5) The text of the Protocol was approved by the Trade Committee of the Trade Agreement at its meeting of 8 February 2016, as required by Article 329(4) thereof.
- (6) In accordance with Council Decision No [...] of [...], the Protocol of Accession was signed on [...] subject to its conclusion at a later date. The Protocol of Accession has been provisionally applied since [...], pending its entry into force.
- (7) The Protocol should be approved,

¹ OJ C [...], [...], p. [...].

² OJ L 354, 21.12.2012, p. 3.

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

The President of the Council shall designate the person(s) empowered to proceed on behalf of the European Union to give the notification referred to in Article 27(2) of the Protocol of Accession, in order to express the consent of the European Union to be bound by the Protocol of Accession.

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to [the deposit of the instrument of approval] [the notification] [the exchange of the instruments of approval] provided for in Article [...] of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

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

Article 4

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

Done at Brussels,

For the Council
The President

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

1. NAME OF THE PROPOSAL:

COUNCIL DECISION on the conclusion of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the Accession of Ecuador.

2. BUDGET LINES

Chapter and Article: Chapter 12, Article 120

Amount budgeted for the year 2016:

3. FINANCIAL IMPACT

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

(EUR million to one decimal place)

Budget line	Revenue ³	12 month period, starting dd/mm/yyyy	[Year n]
Article 120	<i>Impact on own resources</i>	Date of provisional application	

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

4. ANTI-FRAUD MEASURES

The EU's customs legislation is designed to ensure the correct application of all EU customs measures including the tariff preferences laid down in this Protocol of Accession, which also

³ Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs.

provides for the application of the necessary provisions of the Trade Agreement on the application of preferential rules of origin and administrative cooperation (Annex II), assistance with enquiries (Annex V), and the possibility, after consultations, of temporary withdrawal of tariff preferences in the event of frauds and irregularities involving preferential treatment (Annex III).

5. OTHER REMARKS

This estimate is based on the average volume of imports over the period 2012-2014.