



EUROPEAN COMMISSION

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2011/0293 (NLE)

Proposal for a

COUNCIL DECISION

authorising the signature and provisional application of the trade part (Part IV) of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other

EXPLANATORY MEMORANDUM

1. BACKGROUND

The attached proposal constitutes the legal instrument for authorising the signature and, pending its conclusion, provisional application of the trade part (Part IV) of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (hereinafter referred to as "the Agreement"):

- Proposal for a Council Decision on the signature and provisional application of the trade part of the Association Agreement.

At the European Union - Latin America and Caribbean Summit held in Vienna on 12 - 13 May 2006, the Heads of State and Government of the European Union and of certain Central American Republics decided to open negotiations on an Association Agreement between the two regions, including the establishment of a Free Trade Agreement. Negotiations were formally launched in October 2007 following a Council Decision to authorise these negotiations in April 2007.

Panama, which had followed the negotiations as an observer, asked to join the negotiations in January 2010. This inclusion of Panama was formally accepted on the EU side following the amendment to the negotiating directives by the Council on 10 March 2010.

The negotiations were successfully concluded in May 2010 and - after a phase of legal review - the text of the agreement was initialled on 22 March 2011.

In terms of Political Dialogue, the Agreement includes all the political clauses as an essential element which reflects EU values. Among the political clauses which pursue various foreign policy objectives, Human rights, democracy and the rule of law clause have a specific significance and represent the core of EU values. With regards to Cooperation, the Commission has reached the objective to include provisions to enhance bi-regional cooperation in all areas of common interest with the aim of achieving more sustainable and equitable social and economic development in both regions.

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

The EU Member States were informed orally and in writing on the process of the negotiations with Central America via the Council's AMLAT/COLAT working groups and the Trade Policy Committee. The European Parliament has also been regularly informed on developments via the Committee on International Trade (INTA) and the EP Delegation for Central America. The texts resulting from the negotiations were circulated throughout the

process to both institutions. An independent and detailed Trade Sustainability Impact Assessment (SIA) examining the Agreement's potential economic, social and environmental effects was published in September 2009 on which the Commission services provided their comments in June 2010.

2. NATURE AND SCOPE OF THE AGREEMENT

The main objective of the Political Dialogue is to develop a privileged political partnership based on values, principles and common objectives as well as the reinforcement of our collaboration in every aspect of our interests, notably human rights, conflict prevention and good governance, regional integration, poverty reduction and the fight against inequality, sustainable development. The second part of the Agreement addresses Cooperation, which should be manifested in concrete actions in every aspect of common interest, including economic development, social cohesion, natural resources, culture, justice and the sciences.

The trade part of the Agreement between the EU and Central America establishes the conditions for EU economic operators to take full advantage of the opportunities and the emerging complementarities between their respective economies. Over the course of its implementation, the Agreement will fully relieve EU exporters of industrial and fisheries products to Central America from paying customs duties. It satisfies art. XXIV of the GATT criteria to eliminate duties and other restrictive regulations of commerce with respect to substantially all trade between the parties. In addition, it will reduce the scope for Central America to adopt non-tariff barriers in important areas, for example in the field of labelling requirements for textiles. Central America will benefit from substantial new access to the EU market in particular for their key agriculture exports: bananas, sugar, beef and rum while the EU will grant 100% duty-free coverage for industrial products and fisheries of Central America origin at entry into force of the Agreement.

On services and establishment, commitments obtained from Central American Republics go beyond their commitments under the GATS (General Agreement on Trade in Services) and match key EU interests in relevant sectors (notably in telecom services, environmental services and maritime services as well as in other transport services) while respecting EU sensitivities, e.g. in terms of temporary presence of natural persons for business purposes (mode 4). With regard to certain sectors, the commitments offered by Central American Republics reach effective parity with other agreements concluded by Central America such as the CAFTA or even go beyond in areas such as market access in non-services sectors or maritime transport services. In procurement, the deals concluded with Central America provide important access both on the level of central government and below (including for example procurement related to the Panama Canal).

In addition, the Agreement also establishes a set of disciplines which go beyond those agreed in the multilateral framework notably on intellectual property (e.g. 224 EU geographical indications protected, data protection conditions clarified); sustainable development (the Agreement is GSP+ equivalent or above on labour and environmental issues and contains specific commitments on sustainable fisheries); competition (disciplines on monopolies – transparency obligations on subsidies); technical barriers to trade (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, import check) among others.

Finally, the Agreement establishes an effective institutional framework for its implementation including both an Association Council as well as an Association Committee supported by a set of Sub-Committees to allow for work and consultations on the various areas covered in the trade part of the Agreement and a bilateral dispute settlement mechanism.

Overall the Agreement will therefore lock-in and promote – above and beyond WTO rules – policies of openness and respect at the domestic level for internationally agreed rules and best practices while securing a transparent, non-discriminatory and predictable environment for EU operators and investors in the region.

As the Member States of the European Union will also be Party to this Agreement because of certain commitments in the Protocol on Cultural Co-operation, it needs to be ratified by them according to their internal procedures. This could take a considerable period of time. In order to ensure prompt application of the trade part of the Agreement pending full ratification by the Member States, the Commission therefore proposes to provisionally apply the trade part. In light of the significance of the Agreement, the Commission considers that the Council should send the notifications referred to in Article 353.2, 353.3 and 353.4 only after a certain lapse of time so as to allow the European Parliament to express its views on the Agreement. The Commission is ready to work with the Council and the European Parliament so that the trade part of the Agreement can be provisionally applied in 2012.

3. PROCEDURES

Pending its entry into force, the Agreement foresees the provisional application of its trade part.

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

- to authorise the signature, on behalf of the European Union, of the Agreement between the EU and its Member States of the one part, and Central America of the other;
- to approve the provisional application of the trade part of the Agreement pending its entry into force.

Proposal for a

COUNCIL DECISION

authorising the signature and provisional application of the trade part (Part IV) of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission¹,

Whereas:

- (1) On April 2007 the Council authorised the Commission to negotiate an Association Agreement on behalf of the European Union with Central America. The negotiating directives were amended on 10 March 2010 to include Panama in the negotiation process.
- (2) Those negotiations were concluded at the occasion of the EU-Latin American and Caribbean Summit in Madrid in May 2010 and the Agreement establishing an Association between the European Union and its Member States on the one hand, and Central America on the other (hereinafter referred to as "the Agreement") was initialled on 22 March 2011.
- (3) Article 353(4) of the Agreement provides for the provisional application of its Part IV concerning trade matters.
- (4) The Agreement should be signed on behalf of the European Union and applied on a provisional basis, pending the completion of the procedures for its conclusion.
- (5) Pursuant to Article 218(7) of the Treaty, it is appropriate for the Council to authorise the Commission to approve modifications to the list of geographical indications recommended by the Subcommittee on Intellectual Property to the Association Committee for approval by the Association Council pursuant to Articles 247 and 274.2(a) of the Agreement.
- (6) Pursuant to Article 356 of the Agreement it is appropriate to clarify that the Agreement should not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals,

¹ OJ C , , p . .

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and its Member States, of the one part, and Central America, of the other, is hereby approved on behalf of the European Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the agreement and by the Member State holding the Presidency of the Council.

Article 3

Part IV of the Agreement shall be applied on a provisional basis by the European Union in accordance with Article 353 (4) of the Agreement, pending its entry into force.

The date from which Part IV of the Agreement will be provisionally applied will be published in the Official Journal of the European Union by the General Secretariat of the Council.

Article 4

For the purposes of Article 247 of the Agreement, modifications of the Agreement through decisions of the Association Council, as proposed by the Sub-Committee on Intellectual Property on Geographical Indications, shall be approved by the Commission on behalf of the European Union. Where interested parties cannot reach agreement following objections relating to a Geographical Indications, the Commission shall adopt such a position on the basis of the procedure laid down in Article 15(2) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs².

Article 5

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

The Member States and the institutions of the European Union shall enforce the protection provided for in Article 246 of the Agreement, including at the request of an interested party.

² OJ L 93, 31.3.2006, p. 12.

Article 6

The applicable provision for the purposes of adopting the necessary implementing rules for the application of the rules contained in Appendix 2A of the Annex II "Concerning the Concept of 'Originating Products' and Methods of Administrative Co-operation" and Appendix 2 of Annex I "Elimination of customs duties" of the Agreement is Article 247a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code³.

Article 7

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

Article 8

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

Done at Brussels, [...]

For the Council
The President

³ OJ L 302, 19.10.1992, p. 1.

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

1. NAME OF THE PROPOSAL:

COUNCIL DECISION on the signature and provisional application of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other.

2. BUDGET LINES:

Chapter and Article: 12 0

Amount budgeted for the end of the implementation period

3. FINANCIAL IMPACT

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

(€million to one decimal place)

Budget line	Revenue ⁴	12 month period, starting dd/mm/yyyy	[Year n]
Article ...	<i>Impact on own resources</i>		178.4
Article ...	<i>Impact on own resources</i>		

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

⁴ Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs

Article ...					
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4. ANTI-FRAUD MEASURES

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

5. OTHER REMARKS

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