

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.

EXPLANATORY MEMORANDUM

At the European Union-Latin America and Caribbean Summit held in Vienna on 12-13 May 2006, the Heads of State and Government welcomed the decision to initiate during 2006 a process leading to the negotiation of an Association Agreement between the EU and the Andean Community. On the basis of Article 300 of the Treaty on European Union, the Commission herewith presents its recommendation to the Council in order to open these negotiations.

1. BACKGROUND

1.1. Situation in the Region

After the departure of Venezuela, the Andean Community today comprises four Spanish speaking countries that straddle the Andes: Bolivia, Colombia, Ecuador and Peru. The Andean Community forms an important Latin American sub-regional group in between Central America and Mercosur. The sub-region has a population of approximately 97 million inhabitants. GNI per capita ranges from below US\$1,000 in Bolivia to around US\$2,000 in the other CAN countries coupled with medium to high levels of human development with indexes ranging from 69 in Colombia, 79 in Peru, 82 in Ecuador to 113 in Bolivia.

All Andean Community countries are democracies where peaceful and orderly elections have taken place in the past 2 years. Nevertheless, the political situation in all of these countries remains fragile and the intensity of domestic problems has not diminished over the recent years. This is- mostly due to the persistent poverty and poor governance records in the region. Political parties are failing to fulfil the society's expectations and equal and effective protection under the law as well as adequate funding for social services remain insufficient. Political instability, combined with poverty, weak governance and an increasing demand for cocaine, are further nourishing the production and trafficking of illicit drugs, remaining a very important destabilising factor in the region. The entire world coca cultivation takes place on Andean soil, in particular in Colombia, Peru and Bolivia (but with important spill-over effects and some starting production in Ecuador as well).

After a period of economic crisis and decline beginning at the end of the 1990s, the economies of the CAN countries recovered during 2004, registering not only a growth in GDP, but also progress on practically all principal economic indicators, such as investment, domestic savings, employment, trade balance, inflation, external debt, risk margins, etc. Notwithstanding this, the region remains dependent on constantly changing external factors (such as changes in interest rates initiated by the United States FED or in the international price of petroleum). Further, the social and political instability in the region has affected foreign direct investment (FDI) in the CAN countries where a decrease was noted especially

in Bolivia but also in Ecuador and Peru.

The CAN registered a considerable increase in exports to the rest of the world in 2004 (+35%). This trend continued in 2005 (+ 37.7%): The main products exported to the rest of the world are commodities, while intra-community trade is characterised by manufactured products with a higher added value: The US is the principal trade partner for the CAN, followed by the EU. In respect of FDI, the EU keeps the largest stock of investments in the Andean Community countries.

From a social perspective, the inequality of wealth distribution in the Andean Community remains very pronounced with the income concentration index among the highest in Latin America. Almost half of the Andean population lives in poverty, of which nearly a quarter is of indigenous origin. Environmental problems contribute to the lack of social cohesion as the livelihoods of the poorest segments of the rural and indigenous population are often entirely dependent on natural resources. Social protection services for the poorest and most vulnerable parts of the population are inadequate, inefficient and precarious. The quality of education for the majority of the poor is very low. Unemployment and underemployment are high in all countries of the region and the uncertainty of employment is increasing. The existing inequalities are of a structural nature and they are not only between people but also very outspoken between regions: the fact that the average income is not reached in half of the Andean-regions makes redistributive policies very difficult.

1.2. Regional integration in the Andean Community

This regional organisation, one of the oldest in Latin America, is based on the Cartagena Agreement of 1969, which established the 'Andean Pact'. In the beginning, Chile was a member of this Pact but this country left in 1976 and re-associated itself in September 2006. In 1973, Venezuela became a member but this country left in April 2006. Despite the considerable differences between the Andean Community member countries, leading at times to serious hitches in the process, integration is deepening and extending its scope from purely economic and commercial matters towards a large variety of sectors, such as social cohesion, job creation, the fight against illicit drugs and the protection of the environment.

The entry into force of the Trujillo Protocol in 1997 marked an important step for Andean integration. Firstly, because it transformed the 'Andean Pact' into the 'Andean Community', creating the Andean Integration System with new regional institutions, and secondly, because it prepared the way for an extension of the Andean integration agenda to include matters going beyond purely trade. This led, for example, to the adoption of decisions to directly elect the members of the Andean Parliament and to facilitate the free movement of persons (such as the introduction of the Andean passport and the possibility to use national identification documents to travel-in- the region).

In the early 2000s, the political and economic circumstances of the Andean countries were less encouraging for deepening Andean integration. All countries were suffering political and/or economic difficulties. This context did not allow priority to be given to the regional agenda. There was a decline in intra-community trade, difficulties in adopting a Common External Tariff, more and more infringements of Community rules- and the spread of trade defence measures. It was in this context that a division emerged between those who felt that Andean integration should concentrate on and limit itself to economic and commercial matters, and those who started attaching increasing importance to political and social themes.

A new integration impulse emerged with the adoption of a 'Multi-dimensional integration agenda' in June 2003 at the presidential summit in Quirama. Since, the integration agenda kept widening, the economy started growing again and there was an increase in intra-community trade. The arrival of a new Secretary General provided an impulse towards the adoption of a 'New Strategic Design', which led to a series of new initiatives embraced by the regional integration system such as in the social sphere and in the area of the fight against illicit drugs.

The most significant challenge to the Andean integration system occurred in 2006 when Venezuela decided to leave the Andean Community because of some of its member countries negotiating and/or concluding Free Trade Agreements with the United States. The major crisis which followed was only overcome in mid-June 2006 when the Presidents of the 4 remaining countries renewed their commitment to the Andean Community and its regional integration process in an extra ordinary summit in Quito. This renewed confidence in the CAN regional integration system and its new attractiveness was later illustrated with Chile's announced interest in adhering to the Andean Community as an associate member.

1.3. European Union - Andean Community Relations

The European Union and the Andean Community enjoy a comprehensive relationship that encompasses a political dialogue, a favourable trade regime and a broad co-operation framework.

In the political field, the 1996 Rome Declaration provides for ad-hoc presidential and ministerial meetings. In addition, the Andean region is the only region in the world with which the EU maintains an annual 'High Level Specialized Dialogue on Drugs'. This dialogue has led to the signature of Agreements on Precursors between the Commission and each Andean State in the mid-1990's.

In the field of cooperation, it is worth noting that the Andean region was the first region in Latin America with which the European Commission concluded a regional co-operation agreement. At present our cooperation relations are governed by a 'second generation' regional framework agreement (of 1993, entry into force in 1998). In addition to funds allocated to the region under specific horizontal budget lines as well as to the individual CAN countries under the Country Strategy Papers, there is a Regional Strategy Paper (RSP) covering specific cooperation activities at CAN sub-regional level. The 2002-2006 RSP will soon be replaced by a new RSP covering the period 2007-2013 which the Commission is currently preparing and which is expected to be adopted by the Commission at the beginning of 2007. The EC support at sub-regional level is intended to support regional integration so as to facilitate the negotiation and implementation of the future Association Agreement. Future cooperation activities shall focus primarily on regional economic integration, social and economic cohesion and the fight against illicit drugs.

In 2003, the EU and the Andean Community signed a Political Dialogue and Cooperation Agreement in view of strengthening bi-regional relations as well as to create the conditions under which a feasible and mutually beneficial Association Agreement, including a free trade agreement, could be negotiated between the Parties. This Agreement institutionalizes the political dialogue and expands it to new areas of common interest such as migration, conflict prevention, good governance and counter-terrorism. It further foresees new areas of cooperation, largely corresponding to those of the political dialogue and strengthens

cooperation on trade and regional integration matters. The Agreement will replace the 1993 Framework Agreement on Cooperation once it enters into force which is after the conclusion of the ongoing ratification procedures.

EU-Andean trade relations are governed by the GSP+ incentive under GSP regime, for which all Andean Community countries are eligible. Together with Most Favoured Nation (MFN) provisions, this mechanism allows 90% of Andean export products to enter the EU free of customs. In respect of bananas, falling outside the scope of products covered by the GSP+ incentive, a new tariff-only system was introduced in January 2006.

The CAN ranks relatively high among the EU's main trading partners, with imports and exports amounting to approximately 0.6% of EU world trade. Colombia is the country with most exports towards the EU (45% of the CAN total exports to the EU in 2005), followed by Peru (32%), Ecuador (21 %) and Bolivia (2%). The EU is the CAN's second most important trade partner (14,4% of total trade in 2004) after the United States. Exports from the Andean Community are mainly commodities and agricultural goods and imports from the EU predominantly industrialised goods. In respect of foreign direct investment (FDI), the EU keeps the largest stock of investments in the Andean Community countries.

1.4. Further developments

The decision to conclude a wide-ranging Association Agreement with the Andean Community stems from a favourable context to make a further qualitative step in the relationship between the two regions which is based on the following elements:

- A clear political commitment made by both regions at the EU Latin America and Caribbean Summits in Madrid (2002), Guadalajara (2004) and Vienna (2006) to strengthen bi-regional links and to set the establishment of an Association Agreement as their strategic objective;
- The signature, in 2003, of a new Political Dialogue and Cooperation Agreement which provides for institutionalized political dialogue and enhanced cooperation as a preparatory step towards the Association;
- A renewed momentum in favour of regional integration in the Andean Community (following its internal crisis and Venezuela's decision to leave the Andean Community), pronounced by the Andean countries' presidents in June 2006 and illustrated by the finalization of the joint assessment exercise on regional economic integration and the results of the High Level meeting in July 2006.

As established by the Joint Minutes of the July High Level meeting, the negotiation process for an Association Agreement with the Andean Community will not start automatically. The basic assumption is that the future negotiations should not start before a positive assessment will have been made of progress achieved by the Andean Community in 4 specific areas, notably in respect of the adoption of a common initial point for tariff dismantling, the harmonization of customs procedures, the further liberalisation of services and the facilitation of cross-border road transport.

2. REFERENCES

The following agreements, declarations, decisions and papers constitute the essential reference points for the preparation of the draft negotiating directives for the conclusion of an Association Agreement between the EU and the Andean Community:

- The **1993 Framework Agreement on Cooperation** between the European Economic Community and the Cartagena Agreement and its member countries, namely the Republic of Bolivia, the Republic of Colombia, the Republic of Ecuador, the Republic of Peru and the Republic of Venezuela.
- The **2003 EU-Andean Community Political Dialogue and Cooperation Agreement**, which aims at strengthening bi-regional links, as well as to create the conditions under which a feasible and mutually beneficial Association Agreement, including a Free Trade Agreement, could be negotiated between the Parties.
- The Political Declaration of the EU-Latin America and Caribbean Summit held in **Guadalajara on 28 May 2004**, where the Heads of State and Government agreed that the conclusion of an Association Agreement had become their “common strategic objective”.
- The **December 2005 Communication** issued by the Commission on ‘*A reinforced European Union-Latin America partnership*’, restating its long-term aim of achieving a strategic partnership with the entire Latin American region while stressing the need for the EU to “support the sub-regional integration processes”, notably by opening negotiations towards an Association Agreement with the Andean Community.
- The Political Declaration of the **IVth EU-Latin America and Caribbean Summit** held in **Vienna on 12 May 2006** welcoming the decision taken “to initiate during 2006 a process leading to the negotiation of an Association Agreement between the ED and the Andean Community”.
- The **Joint Minutes of the High Level Meeting between representatives of the European Commission and of the Andean Community, held in Brussels in July 2006**, in which both sides expressed satisfaction for the useful work carried out during the joint assessment exercise on regional economic integration and committed themselves to undertake the necessary steps allowing for the launch of negotiations for an Association Agreement between the EU and the Andean Community.

3. THE ASSOCIATION AGREEMENT

The Agreement proposed by the Commission will be based on the following outline:

- Preamble
- Nature and Scope of the Agreement
- Political Dialogue
- Trade
- Cooperation
- General Provisions
- Institutional Framework
- Structure and organisation of the negotiations
- Start and conclusion of negotiations
- Final Provisions

An important feature of the Agreement is that it will be negotiated on a region-to-region basis in order to provide further impetus to the regional integration process in the Andean Community.

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

A clause referring to the effective start of the negotiations and the conclusion of the Agreement is foreseen. This clause should refer to the assessment of the concrete achievements on the commitments undertaken by the Andean Community at the High Level Meeting of July 2006 as regards the strengthening of its regional economic integration.

The purpose of the Association Agreement is to:

- 1) Consolidate existing relations and develop their potential and mutual benefits by providing a comprehensive, forward-looking perspective for the whole of the EU-Andean Community relationship;
- 2) Develop a privileged political partnership based on respect for and the promotion of human rights, democracy and good governance, and on defending these common values on the world stage, while contributing to the development of multilateralism;
- 3) Firmly root in the democratic achievements in the Andean Community by fostering further intra-regional links and enhancing bi-regional political dialogue and cooperation;
- 4) Enhance bi-regional cooperation so as to reinforce the political, social and economic stability of the Andean Community countries, deepen the process of regional integration, help create conditions for reducing poverty, promote decent work and more equitable access to social services, as well as ensure an appropriate balance between economic, social and environmental components in a sustainable development context;
- 5) Set out the conditions for the gradual establishment of a Free Trade Area between the two regions, and develop both intra- and bi-regional trade exchanges;

- 6) Provide further impetus to the regional economic integration process (notably by negotiating on a region-to-region basis), in order to contribute to higher economic growth and gradual improvement of quality of life for their peoples, integrate the Andean Community in the world economy, harness globalisation in support of sustainable development and open up to new partnerships on the world stage;
- 7) Bolster good neighbourly relations and the principles of peaceful resolution of disputes between the Andean Community countries.

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 the Member States in the appropriate committees of the Council on progress in the negotiations.

The Association Agreement will replace the Political Dialogue and Cooperation Agreement signed in 2003.

RECOMMENDATION

In the light of the above, the Commission recommends the Council to:

- authorise the Commission to negotiate an Association Agreement, including a Free Trade Area, with the Andean Community;
- designate a special committee to assist the Commission, which in accordance with the Treaty establishing the European Community will conduct these negotiations on behalf of the European Community;
- adopt the attached negotiating directives.

ANNEX

DIRECTIVES FOR THE NEGOTIATION BY THE COMMISSION OF AN ASSOCIATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, ON THE ONE PART, AND THE ANDEAN COMMUNITY AND ITS MEMBER COUNTRIES, ON THE OTHER PART

Preamble

Consideration shall be given to the traditional historical and cultural links between the Parties and to the desire to consolidate, deepen and diversify bi-regional links in areas of mutual interest in a spirit of mutual respect, equality, non-discrimination, solidarity and mutual benefit.

Mention should be made of the conclusions of the Vienna Summit, including the commitments undertaken by the Andean Community as regards the deepening of regional economic integration.

The Association should build on the existing principles, objectives and mechanisms that govern relations between the two regions, in particular the 1993 Framework Agreement on Cooperation and the 2003 Political Dialogue and Cooperation Agreement.

The Association should be founded on

- greater political cooperation;
- progressive and reciprocal liberalisation, by means of an ambitious, comprehensive, balanced Free Trade Area fully compliant with the rules and obligations of the World Trade Organisation, as well as investment promotion;
- enhanced cooperation in all matters of common interest.

At the same time, the Parties shall reiterate their commitment to further promote and strengthen the strategic partnership developed between the European Union and Latin America and the Caribbean at the 1999 Rio Summit and reaffirmed at the subsequent EU-Latin America and Caribbean Summits in Madrid 2002, Guadalajara 2004 and Vienna 2006.

The following fundamental elements shall be contained in the Association Agreement:

- 1) Respect for and the promotion of democratic principles, fundamental human rights and fundamental freedoms as set out in the Universal Declaration of Human Rights. This shall constitute an essential element of the Agreement, including respect for the rights and fundamental freedoms of ethnic minorities and indigenous peoples. The Parties should recognise that the protection of human rights defenders and the elimination of impunity are basic conditions for progress in these areas.
- 2) The principles of the rule of law, good governance and the fight against corruption, including international commitments on good governance, labour rights and environmental related provisions subscribed to by and applicable to the Parties at the time of the application of the Agreement.

- 3) The importance of strengthening regular political dialogue on bilateral and international issues of mutual interest as established by the 2003 Political Dialogue and Cooperation Agreement.
- 4) A commitment to the shared responsibility principle in respect of the fight against illicit drug consumption, production and trafficking; a commitment to fight money laundering, organised crime (including corruption), terrorism as well as to the need for enhanced cooperation in the field of justice, freedom and security, covering rule of law, migration, and asylum issues.
- 5) Reaffirmation of the willingness to contribute resolutely, through constructive engagement, to common responses to the main development and security problems and to combat threats to peace and security such as the proliferation of weapons of mass destruction. This shall include enhanced cooperation in foreign and security policy, with a particular emphasis on regional issues, conflict prevention and disarmament, together with cooperation in international fora, with a view to arriving at convergent positions and addressing global issues through multilateralism.
- 6) Expression of the commitment to a strong and effective multilateral system, based on international law, supported by strong international institutions and with the United Nations at its centre.
- 7) Inclusion of the standard clauses on:
 - the fight against terrorism,
 - countering the proliferation of weapons of mass destruction,
 - serious crimes of international concern (the International Criminal Court).
- 8) Reaffirmation of the need to strengthen the programme of cooperation governed by the Framework Agreement on Cooperation between the European Economic Community and the Cartagena Agreement and its member countries signed in 1993.
- 9) The Agreement will recognise that sustainable development is an overarching objective of the Parties and will aim at furthering their economic development together with a high level of environmental protection and social cohesion. In particular, the Agreement should:
 - reaffirm the commitment to increase social cohesion (inter alia through investing in people and their institutions, including education, research and innovation) to promoting equitable and sustained economic growth in order to create more and better jobs, to promote decent work, foster social dialogue, as well as to fighting poverty, social exclusion and all forms of discrimination to improve the living conditions of all individuals and groups;
 - reaffirm the commitment to working together in pursuit of environmental aspects of sustainable development, for example on vulnerability to natural disasters, protection of the environment, sustainable management of natural resources and biodiversity;
 - help promote the progressive integration of the Andean Community countries into the world economy. In this context, the relationship between poverty/social

cohesion and the environment, as well as the environmental impact of economic activities shall be considered as key factors.

The implementation of the conclusions of the World Summit on Sustainable Development and commitment to reaching the Millennium Development Goals should be taken into account in all activities undertaken by the Parties under the Agreement.

- 10) Provision for readmission on the basis of EU Council decisions.
- 11) The importance attached to the principles and rules which govern international trade, in particular under the auspices of the WTO, and to the need to apply them in a transparent and non-discriminatory manner will be underlined.
- 12) Provision within the Association for a comprehensive, balanced Free Trade Area, fully compliant with the rules and obligations of the WTO while going beyond the WTO's basic rules, so as to maximise the mutual and long term benefits of bi-regional trade liberalisation.
- 13) Reaffirmation of the principles and values on which both sides base their regional integration and inter-regional trade relations. The pursuit of development that is sustainable according to economic, social and environmental criteria will be the overarching objective and a criterion by which issues arising under different political, cooperation and trade headings in the agreement may be settled.
- 14) The belief that the Free Trade Area will create a new climate for economic relations between the two Parties and above all for the development of trade and investment, which are crucial factors to economic reform and development.
- 15) Region-to-region asymmetries where necessary, while limiting differentiation of commitments between the Andean Community countries strictly to a minimum.
- 16) Recognition of the need to deepen the process of regional integration, trade liberalisation and economic reform within the Andean Community. The European side supports and encourages the process of trade liberalisation and economic integration so far implemented in the Andean Community. In this context, the two sides will pay due consideration to the conclusions of the Joint Assessment carried out by the EU and the Andean Community. They shall recognise the need to pursue full region-to-region negotiations on the Association Agreement for the purpose of stimulating and consolidating regional integration efforts in the Andean region, including economic regional integration.
- 17) Commitment to work together to provide comparable statistical information on selected areas, given that high quality statistics are a prerequisite to measuring progress on many of the elements listed in the Agreement.

Nature and scope of the Agreement

The Association Agreement with the Andean Community is envisaged as a comprehensive agreement, governing the whole array of multifaceted relations between the EU and the Andean Community (political dialogue, cooperation and trade) in a single Agreement, thus reflecting more visibly the depth and variety of bi-regional links while developing them further.

The purpose of the Association Agreement is to:

- 1) Consolidate existing relations and develop their potential and mutual benefits by providing a comprehensive, forward-looking perspective for the whole of the EU- Andean Community relationship;
- 2) Develop a privileged political partnership based on respect for and the promotion of human rights, democracy and good governance, and on defending these common values on the world stage, while contributing to the development of multilateralism;
- 3) Firmly root in the democratic achievements in the Andean Community by fostering further intra-regional links and enhancing bi-regional political dialogue and cooperation;
- 4) Enhance bi-regional cooperation so as to reinforce the political, social and economic stability of the Andean Community countries, deepen the process of regional integration, help create conditions for reducing poverty, promote decent work and more equitable access to social services, contribute to the protection and preservation of the environment and natural resources, as well as ensure an appropriate balance between economic, social and environmental components in a sustainable development context;
- 5) Set out the conditions for the gradual establishment of a Free Trade Area between the two regions, and develop both intra- and bi-regional trade exchanges;
- 6) Provide further impetus to the regional economic integration process (notably by negotiating on a region-to-region basis), in order to contribute to higher economic growth and gradual improvement of quality of life for their peoples, integrate the Andean Community in the world economy, harness globalisation in support of sustainable development and open up to new partnerships on the world stage;
- 7) Bolster good-neighbourly relations and the principles of peaceful resolution of disputes between the Andean Community countries.

The Agreement will rest on the assumption that adherence to and effective implementation of international agreed standards in the social, core labour and environmental domain is a necessary condition for sustainable development. In particular, the Agreement will aim to maintain the level of good governance, social, labour and environmental standards achieved through ratification and effective implementation of relevant international Conventions subscribed by and applicable to the Parties at the time of entry into force of the Agreement.

The Association Agreement will replace the Political Dialogue and Cooperation Agreement signed in 2003.

Political dialogue

The Title of the Association Agreement on 'Political dialogue' shall be based on Title II 'Political dialogue', Articles 3 to 5, of the 2003 Political Dialogue and Cooperation Agreement, which formalises and strengthens the political dialogue established through the 1996 Rome Declaration and provides for a comprehensive mechanism for cooperation.

Thus, political dialogue shall cover all aspects of mutual interest and also pave the way for new initiatives pursuing common goals and establishing common ground in areas of mutual interest including regional integration, poverty reduction and social cohesion, sustainable development, regional security and stability, conflict prevention and resolution, human rights, democracy, good governance, migration, fight against corruption, counter-terrorism, illicit drugs, small arms and light weapons, weapons of mass destruction and serious crimes of international concern.

As provided for in the 2003 Agreement, political dialogue should also include terms for cooperation in the field of foreign and security policy.

Dialogue under this Title shall include political aspects of the international conventions on human rights, good governance, core labour standards and the environment subscribed to by and applicable to the Parties at the time of the entry into force of the Agreement.

In consideration of the relevance of the indigenous peoples in the Andean Community, the Parties could analyse how to take in due account and include, in the negotiations of the Agreement, a commitment to ratify and implement ILO Convention 169¹. One option would be to include in the Agreement a commitment to the principles contained in the Declaration on the rights of indigenous peoples, to be adopted by the UN General Assembly before the end of 2006.

A parliamentary dialogue, which will consist of representatives of the European Parliament and the Andean Community's Parliament, will be encouraged.

¹ Proposal made by representatives of civil society

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. 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 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 the Andean Community countries' commitments to the EU shall 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 may 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 should also take into account specific interests of the outermost regions of the EU.

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.

Specific provisions will regulate products identified as sensitive for which, for instance, a longer dismantling period or partial liberalisation commitments will apply. Any such specific provisions or treatment will be kept to a minimum, in terms of both tariff lines and the value of trade between the Parties. 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.

The basic duties to which the successive reductions are to be applied shall be those applied by

the European Community *erga omnes* on the day before the signing of the Agreement and the common external tariff applicable by the Andean Community *erga omnes* on the day before the signing of the Agreement.

GSP preferences currently applied by the European Community to products originating in the Andean Community countries shall be covered in the Agreement. Simultaneously, the Andean Community beneficiary countries shall be withdrawn from the list of countries benefiting from Regulation (EC) No 980/2005 (GSP Regulation).

With regard to tariff lines not yet 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 the Andean Community countries. The European Community should not negotiate an individual dismantling timetable for any product, regardless whether they have been harmonised previously within the Andean Community or not.

If, after the entry into force of the overall Agreement or of a possible Interim Agreement a tariff reduction is applied *erga omnes*, it will replace the basic duties referred to above, and successive reductions shall be calculated according to these new base rates.

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

An annex setting out the applicable preferential rules of origin and containing provisions on administrative cooperation will be annexed to the Agreement. The annex will be based on the orientations of the Commission communication of 16 March 2005 entitled '*The rules of origin in preferential trade arrangements*'. 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 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.

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.

The Andean Community shall undertake to the same trade regime with respect to Turkey as with the EU for all areas covered by the EC-Turkey Customs Union.

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 could be solved on a request and offer basis, in parallel with exchanges on tariff concessions. In order to improve market access at a level which cannot be achieved sufficiently 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 refer to a number of general principles (such as proportionality, no due restrictions, transparency, non-discrimination) 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, 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 mechanism for recognition of equivalence including the prelisting 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.

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, the 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 of non-scheduled, and services directly related to the exercise of traffic right, other than:
 - aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - selling and marketing of air transport services;
 - computer reservation-system (CRS) services, and
 - other ancillary services that facilitate the operations of air carriers.

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 audiovisual exchanges and favouring inter-cultural dialogue, as a complement to co-operation 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.

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.

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 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).

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.

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 in the water, energy and transport sectors as well as for information and communication networks. 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.

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 and geographical indications

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.

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 finalised prior to the signature of any final agreement. The SIA will aim at clarifying the likely effects of trade, as a consequence of the agreement, on sustainable development on both sides, as well as at 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 an exception clause based on 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 focusing on the trade effects of measures rather than on their legality. This mechanism would be without prejudice to the Parties' rights and obligations or to dispute settlement provided for under the Agreement.

Cooperation

In terms of principles, objectives, methodology and areas of activity, the Cooperation Title should be largely based on the provisions of the 2003 Agreement (Title III, Articles 6 to 50). The latter broadens coverage to include areas of cooperation such as human rights, migration and counter-terrorism. Further to the 1993 Framework Cooperation Agreement and the 2003 Political Dialogue and Cooperation Agreement:

- The Association Agreement should advocate the widest possible scope for bi-regional cooperation, from which no field of activity should in principle be excluded.
- The aim for cooperation between the two sides should be to strengthen links between the Parties while contributing to the sustainable development of the countries' economies and raising standards of living.
- Special emphasis should be put on the promotion of political and social stability, democracy, respect for human rights and good governance. A key objective of the Association will be to deepen the process of regional integration among the countries of the Andean Community, so as to contribute to higher economic growth, gradual improvement of quality of life for their peoples, poverty reduction and the promotion of both social cohesion and sustainable development, as supported also by the expanded external lending mandate of the EIB, which will support regional integration, environmental sustainability and energy projects. As regards the response strategy to natural disasters, linkages between Relief, Rehabilitation and Development will be also addressed by cooperation activities where necessary.

As regards the specific areas of activity, the Association Agreement should inter alia include the following components:

- Articles on justice, freedom and security will cover reinforcement of institutions/rule of law, data protection, migration (including readmission - standard clause), combating money laundering (including the financing of the terrorism), illicit drugs, combating organised crime (including corruption) and counter terrorism (standard clause). They will be grouped in one JFS sub-title and will build on the relevant articles of the 2003 Political Dialogue and Cooperation Agreement. As compared to the 2003 Agreement, new articles on combating organised crime and on reinforcement or institutional rule of law will be added and the article on data protection will be presented in a new formulation.
- Cooperation on sustainable development. The Agreement should include mechanisms contributing to the effective implementation of ILO core labour and relevant international standards, as well as to reinforce cooperation on employment, social and global environmental issues. EU's cooperation activities will pay due consideration to the results of the Sustainability Impact Assessment (SIA) mentioned within the Trade Title.
- Social cooperation. This will take into account recent developments at bi-regional level, namely the conclusions of the Vienna Summit in 2006 and of the 2005 UN World Summit, which underscore the need for mutually reinforcing economic, social and environmental policies, and highlight the key role of generation of decent work and commit Parties in supporting social dialogue at national, sub-regional and bi-regional levels.

- Cooperation on trade-related matters and assistance. This should aim to strengthen regional economic integration in the Andean Community, and contribute to the establishment of a bi-regional Free Trade Area. For example, cooperation will include provisions on Technical Barriers and SPS in order both to identify specific priority sectors where the Parties could obtain further benefits and to help the Andean Community countries to meet relevant technical requirements and SPS standards. Activities on intellectual property rights should be aimed at substantially improving enforcement of the applicable rules in the Andean Community. Provisions concerning cooperation on trade facilitation, customs and tax issues could also be considered.

In this framework, in accordance with the conclusions of the High Level meeting between the European Commission and the Andean Community in July 2006, the findings of the joint assessment process for regional economic integration carried out by the Ad Hoc Joint Working Group in 2005 and 2006 should also be taken into account in defining specific cooperation activities related to regional integration.

- Mutual administrative assistance and customs cooperation. The Parties shall aim to negotiate a Protocol on mutual assistance in customs and customs-related matters, which shall include, among others, provisions on joint cooperation, mutual exchange of information, technical expertise, confidentiality and the submission of evidence in judicial proceedings. The Parties may consider drafting additional provisions concerning cooperation on customs and tax issues. The Agreement will also empower the Parties to take appropriate measures in the event of a lack of administrative cooperation in customs and related matters.
- Good governance in the tax area. With a view to strengthening and developing economic activities while taking into account the need to develop an appropriate regulatory framework, the Parties will recognise and endeavour to implement the principles of good governance in the tax area, such as transparency, exchange of information, and fair tax competition. To that effect, within the Agreement, they will aim at improving international cooperation in the tax area, at facilitating the collection of legitimate tax revenues, as well as developing measures for the effective implementation of the above mentioned principles.
- Knowledge intensive cooperation in education, science, technology and innovation should be sought as part of the implementation of the EU-LAC Knowledge Area consistently promoted in the declarations of all EU-LAC summits since Madrid in 2002 and most recently confirmed at the 2006 Vienna Summit. High levels of engagement in knowledge-intensive areas of cooperation have good potential for enabling economic and social progress, especially if this is coordinated with bilateral development cooperation. They are essential also for mainstreaming environmental dimensions of sustainable development.
- Audio-visual and cultural cooperation will be specifically addressed by the Parties. In this regard cultural cooperation, including contacts between cultural agents, and exchanges should aim to promote mutual understanding and the knowledge of the respective cultures.

The Association Agreement should also make reference to the possibility to expand and deepen cooperation by establishing specific *policy sector dialogues* in areas of common

interest. Any other type of measure to support the implementation of the Association Agreement should be also considered.

General provisions

This title will include inter alia provisions on:

- means to be made available in order to fulfil the objectives set out in the Agreement,
- possible discrepancies in the interpretation and on the application of the agreement, and
- a 'future developments' clause.

Institutional framework

This title will set out the necessary institutional arrangements for the application of the Agreement, namely the establishment of a Joint Council, which will meet at ministerial level, and of a Joint Committee, which will meet alternately in the European Union and Central America at senior official level, and will be responsible for the general implementation of the Agreement. The Joint Council may decide to set up any other special committee or body to assist it in the performance of its duties.

Civil society will be involved as appropriate in the implementation of the Association Agreement by means of a bi-regional Consultative Committee which will be established by the Parties to the Agreement.

Structure and organisation of the negotiations

The Commission will be in charge of the overall negotiations of the Association Agreement. The Commission shall conduct the negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task, and within the framework of these directives. The Commission shall conduct the negotiations on the Trade part of the Agreement in consultation also with the Article 133 Committee.

The Commission shall report regularly to the special committee and to the other relevant committees on the progress of the negotiations. On matters falling within their competence, Member States may attend the negotiating sessions.

Start and conclusion of negotiations

As laid down at the EU-Latin America and Caribbean Summit in Guadalajara, the Association between the two regions should be based on higher levels of economic integration in the Andean Community. To this effect, at the High Level meeting between the European Commission and the Andean Community which took place in July 2006 following the EU-Latin America and Caribbean Summit in Vienna, the Andean Community committed itself to make further progress in respect of its regional economic integration. Accordingly, when starting negotiations, the Commission will specifically assess concrete achievements regarding:

- the adoption of a common starting point for tariff dismantling to products originating in the EU;
- the simplification and harmonisation of customs regimes;
- the further liberalisation of services; and
- the facilitation of cross border road transport.

In any event, the European Community will aim for the Agreement to be concluded and to enter into force

- on the basis of a single preferential Andean tariff regime applicable to all products originating in the EU and that are subject to liberalisation in the Agreement;
- upon the entry into force of harmonised customs regimes in the Andean Community; and
- following the effective introduction of measures facilitating cross border road transport.

Final provisions

This part shall include provisions on the following issues:

- definition of the Parties,
- entry into force, duration and termination of the Agreement,
- authentic languages,
- territorial application of the agreement,
- national security clause,
- non-execution clause,
- replacement of the existing Agreements between the Parties.