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Modernisation of the trade pillar of the EU-Chile Association Agreement

European Parliament recommendation of 14 September 2017 to the Council, the Commission and the European External Action Service on the negotiations of the modernisation of the trade pillar of the EU-Chile Association Agreement (2017/2057(INI))

The European Parliament,

— having regard to the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, which was concluded in 2002, and to its trade pillar which entered into force on 1 February 2003¹ (hereafter the AA),

— having regard to the outcome of the sixth EU-Chile Association Council meeting held in April 2015²,

— having regard to the Final Declaration adopted by the Joint Consultative Committee (JCC) on 5 October 2016³,

— having regard to the Commission communication of 14 October 2015 entitled ‘Trade for All — Towards a more responsible trade and investment policy’ (COM(2015)0497) and to the Commission reflection papers of May 2017 on ‘Harnessing Globalisation’⁴ and of April 2017 on ‘Social Dimension of Europe’⁵,

— having regard to the judgments and opinions of the Court of Justice of the European Union (C-350/12 P, 2/13, 1/09) and the decision of the European Ombudsman of 6 January 2015 closing her own-initiative inquiry OI/10/2014/RA on dealing with information and access to documents⁶, and having regard to the Opinion 2/15 of the Court of Justice of 16 May 2017,

having regard to its resolution of 3 February 2016 containing the European Parliament’s recommendations to the Commission for the negotiations for the Trade in Services Agreement (TiSA)

having regard to the amendments that it adopted on 4 July 2017 on the proposal for a directive on the disclosure of income tax information by certain undertakings and branches,

having regard to its resolutions of 5 July 2016 on the implementation of the 2010 recommendations of Parliament on social and environmental standards, human rights and corporate responsibility, and of 25 November 2010 on international trade policy in the context of climate change imperatives,

having regard to its EPRS study on ‘The effects of human rights related clauses in the EU-Mexico Global Agreement and the EU-Chile Association Agreement’,

having regard to the Organisation for Economic Cooperation and Development (OECD) Guidelines on Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and the International Labour Organisation (ILO), the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the ILO Decent Work Agenda,

having regard to the 2015 United Nations Framework Convention on Climate Change (Paris Agreement), which entered into force on 4 November 2016, and which Chile has also ratified,

having regard to the Joint Declaration of the EU-Chile Joint Parliamentary Committee (JPC) of 3 November 2016,

having regard to Article 21 of the Treaty on European Union (TEU) and Articles 8, 207(3) and 217 of the Treaty on the Functioning of the European Union (TFEU),

having regard to the draft negotiating guidelines adopted by the Commission on 24 May 2017,

having regard to the article on Chile in the yearbook of the International Work Group for Indigenous Affairs (IWGIA) entitled ‘The Indigenous World 2016’,

having regard to Rule 108(4) and 52 of its Rules of Procedure,

having regard to the report of the Committee on International Trade (A8-0267/2017),

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1 Texts adopted, P8_TA(2016)0041.
4 OJ C 99 E, 3.4.2012, p. 94.
8 http://www.iwgia.org/publications/search-pubs?publication_id=740
A. whereas the ‘Trade for All’ strategy states that the ‘Commission must pursue a trade policy that benefits society as a whole and promotes European and universal standards and values alongside core economic interests, putting a greater emphasis on sustainable development, human rights, tax evasion, consumer protection, and responsible and fair trade’;

B. whereas the EU and Chile are close partners with common values and a shared commitment to promoting effective multilateral trade governance and respect for human rights, as well as shared prosperity and security within a rules-based global system; whereas the Union is Chile’s third biggest trading partner; whereas Chile, for its part, is an important regional player and one of South America’s fastest-growing economies in recent decades, and reform efforts in the country are still ongoing;

C. whereas the current AA, including its trade pillar, was concluded in 2002 and has been greatly beneficial to both parties since its implementation in 2003, doubling trade in goods and seeing an increasing trade in services and investments1; considering, however, that both the EU and Chile have concluded more modern and ambitious trade agreements since;

D. whereas in 2016 the EU exported goods to Chile to a value of more than EUR 8.6 billion, while Chile exported goods to the EU to a value of EUR 7.4 billion; whereas in 2015 the value of the EU’s trade in services with Chile accounted for EUR 3.8 billion and Chile’s EUR 2 billion; whereas the EU’s stocks of foreign direct investment (FDI) in Chile accounted for EUR 42.8 billion2;

E. whereas the current AA does not include, inter alia, separate chapters on investment, SMEs, intellectual property rights (IPR), energy and gender, nor does it include a trade and sustainable development chapter (TSDC), including obligations to enforce labour and environmental standards, and the promotion of best practices in areas such as corporate social responsibility (CSR) and sustainability assurance;

F. whereas any EU trade negotiation must preserve the right and ability of governments to regulate in the public interest, such as the protection and promotion of public health, social services, social and consumer protection, public education, safety, environment, animal welfare, public morals, privacy and data protection, and the promotion and protection of cultural diversity;

G. whereas any EU trade negotiation must guarantee the highest levels of social, labour and environmental protection achieved by the parties, and may serve as a tool to promote an agenda of social justice and sustainable development, both in the EU and throughout the world; whereas the modernisation of the AA should be seen as an opportunity for the EU and its Member States to further promote common high standards and commitments in their trade agreements, especially in the areas of labour rights, environmental protection, consumer rights and public welfare; whereas the Commission has announced a reflection on different ways to enforce these commitments which will also consider a sanctions-based mechanism;

H. whereas the EU-Chile JCC, comprising civil society organisations from both parties,

1 http://ec.europa.eu/trade/policy/countries-and-regions/countries/chile/
held its first meeting on 4 and 5 October 2016 with a view to monitoring the implementation of the existing AA, as well as the negotiations for its update, by channelling the input from civil society and promoting dialogue and cooperation between the EU and Chile beyond governmental channels; whereas the significant delay in establishing the JCC must not be repeated with respect to the modernised agreement; whereas once the modernised agreement enters into force, the participation of civil society must be based on clear structures, a balance of membership and reporting mandates;

I. whereas the EU and Chile have been engaged in plurilateral negotiations to further liberalise trade in services (TiSA);

J. whereas Chile is not a party, but an observer, to the WTO Agreement on Government Procurement (GPA), and is not participating in the plurilateral negotiations on an Environmental Goods Agreement (EGA);

K. whereas Article 45 of the 2002 EU-Chile AA includes provisions in the cooperation chapter specifying that it should ‘contribute to strengthening policies and programmes that improve, guarantee and extend the equitable participation of men and women in all sectors of political, economic, social and cultural life’;

L. whereas Chile is a signatory to the Trans Pacific Partnership (TPP), the future of which appears currently uncertain, has signed FTAs with all TPP signatories and is widely considered a stable and reliable partner;

M. whereas in 2010 Chile became the first South American country to become a member of the OECD and has a sound macroeconomic framework;

N. whereas it is important to maximise the opportunities offered by the modernisation of the AA’s trade pillar in the most inclusive manner for businesses, in particular SMEs, and citizens in both EU and Chile; whereas more could be done in this regard, including, inter alia, the dissemination of accessible information, which could trigger an important multiplying effect of benefits for the parties of the AA;

O. whereas Chile has bilateral investment treaties (BITs) with 17 EU Member States, the content of which does not reflect the latest developments and best practice in investment policy, and which would be replaced and cease to apply once an agreement containing an investment chapter between the Union and Chile enters into force;

P. whereas disproportionately strict conditions in Chilean legislation, with which EU fishing vessels must comply, impede those vessels when using port facilities in Chile in order to land, tranship, refuel or obtain fishing gear;

Q. whereas the current export pattern of Chile contrasts sharply with the European export pattern, as it is heavily dominated by exports of raw materials, such as copper, fruit and vegetables;

I. Recommends the following to the Council, the Commission and the EEAS:

(a) to ensure that the European Parliament receives full, immediate and accurate information throughout the negotiations for the purposes of its role of deciding whether or not to grant consent to the conclusion of the modernised AA with
Chile, including the agreement’s trade pillar; to bear in mind that, while AAs struck in accordance with Article 217 TFEU are traditionally of a mixed nature and cover areas beyond common commercial policy, following the opinion of the Court of Justice on the EU-Singapore FTA, a deep reflection on the path forward of the modernisation of the EU-Chile AA is necessary, in order to separate and safeguard the areas of exclusive and shared competence in trade, and to fully respect the distribution of competences between the Union and its Member States throughout the negotiation process, as well as with a view to the signature and conclusion of the agreements; to conclude, therefore, two separate agreements, clearly distinguishing between a trade and investment agreement which only contains issues under the Union’s exclusive competence and a second agreement which covers subjects whose competences are shared with Member States;

(b) to note that both the EU and Chile have concluded more modern, ambitious and comprehensive trade agreements since their bilateral AA entered into force and that a number of areas remain unaddressed by it, which are important to ensure that it contributes to shared growth, equal opportunities, decent jobs and sustainable development, including the respect and promotion of labour and environmental standards, animal welfare, and gender equality for the benefit of citizens on both sides;

(c) to consider it important and necessary to seek to modernise the EU-Chile AA to take into account the economic and political development over the last 15 years, in particular its trade component, in the spirit of reciprocity, mutual benefit and balance, and to note the consistent support for a modernisation expressed by the EU-Chile JPC, as well as the fact that the JCC welcomed the steps taken towards an update;

(d) to recall that globalisation and trade policy have recently been the subject of intense debate in Europe and elsewhere, because of the potentially unequal distribution of its gains; to consider that it is necessary to anticipate trends and possible consequences, to guarantee a more inclusive distribution of the benefits of trade and to provide adequate protection to those who do not benefit from the agreement and who may be disadvantaged in the subsequent process; to develop policy action, therefore, primarily at national but also Union level in other spheres, beyond the provisions of the trade agreements themselves, ranging from industrial, fiscal and social policies;

(e) to recall the importance of the multilateral agenda and that any bilateral negotiation must not undermine the ambition to achieve progress multilaterally; to consider that reinforced bilateral relations and joint cooperation between the EU and Chile should also facilitate greater collaboration and synergy among the parties in multilateral and plurilateral settings; to encourage, in this regard, full participation of Chile in the negotiations for the WTO EGA and the WTO Revised GPA;

(f) to put shared values at the core of the modernisation process and to continue the practice of including a human rights clause, as is done in all AAs;

(g) to ensure that a modernised AA guarantees, throughout the entire text, and
enshrines explicitly and unequivocally, the right and ability of the parties to adopt and apply their own laws and regulations in the public interest, in order to achieve legitimate public policy objectives such as the protection and promotion of human rights, including access to water, public health, social services, public education, safety, the environment, public morals, social or consumer protection, privacy and data protection, and the promotion and protection of cultural diversity; to ensure that no investor claim can successfully undermine these objectives; to underline, in this regard, that the EU’s FTAs do not aim to restrict the legitimate interests of the Union, its Member States or sub-federal entities to regulate in the public interest;

(h) on the negotiations on trade in goods, to seek ambitious improvements to market access across tariff lines, lifting unnecessary barriers, including with regard to access to port facilities for EU vessels, while respecting that there are a number of sensitive agricultural, manufacturing and industrial products which should be given appropriate treatment, for example though tariff-rate quotas (TRQs), adequate transition periods or outright exclusion, if necessary; to include a usable and effective bilateral safeguard clause enabling the temporary suspension of preferences, if, as a result of the entry into force of the modernised AA, a rise in imports causes or threatens to cause serious injury to sensitive sectors;

(i) to include in its negotiating directives the objective to simplify rules of origin and customs procedures with a view to adapting them to the reality of increasingly complex global value chains; to ensure that a modernised AA includes anti-fraud provisions and measures, and commitments to standardise customs’ rules and practices, with a view to increasing transparency, effectiveness, legal certainty and cooperation between customs authorities, while modernising and simplifying procedures, as enshrined in the WTO Trade Facilitation Agreement (TFA) and the revised Kyoto Convention;

(j) on trade in services, to consider that the potential of the service sector is not fully accomplished in the current AA, and that a modernised AA should address unnecessary barriers for the purposes of market access and national treatment; to consider that commitments should be taken by building on the General Agreement on Trade in Services (GATS) and that rules should be updated as necessary to account for new developments; to exclude audiovisual services from the scope of application of the agreement; to ensure and explicitly foresee that the modernised AA does not hinder the parties’ ability to define, regulate, provide and support public services in the public interest, that it will by no means require governments to privatise any service, neither will it prevent governments from providing public services previously supplied by private service suppliers or from bringing back under public control services that governments have previously chosen to privatise, nor will it preclude governments from expanding the range of services they supply to the public by excluding any clauses, provisions or commitments that would undercut the necessary flexibility to bring current and future services of general economic interest back into public control;

(k) to ensure that a modernised agreement establishes the necessary steps providing for increased regulatory transparency and mutual recognition, including
provisions to ensure impartiality and respect for the highest standards of protection with regard to requirements, qualifications and licences, and to foresee, in this regard, institutional mechanisms for consultation that involve various stakeholders such as SMEs and civil society organisations;

(l) to ensure that, while commitments are made to facilitate the entry and stay of natural persons for business purposes, foreign service-providers have to comply with EU and Member State social and labour legislation, and with applicable collective agreements when workers benefit from Mode 4 commitments;

(m) to ensure that ambitious regulatory cooperation and the harmonisation of standards remain voluntary, respect the autonomy of regulatory authorities, are based on enhanced information exchange and administrative cooperation with a view to identifying unnecessary barriers and administrative burdens, and preserve the precautionary principle; to recall that regulatory cooperation must aim to benefit governance of the global economy by intensified convergence and cooperation on international standards, guaranteeing the highest level of consumer, environmental, social and labour protection;

(n) to consider that the modernised AA include for financial services a prudential carve-out building upon that contained in the EU-Canada Comprehensive Economic and Trade Agreement (CETA) to enshrine the policy space for the parties to regulate their financial and banking sectors with a view to ensuring the stability and integrity of the financial system; to include safeguard measures and general exceptions with regard to capital movements and payments, to be applied when these may cause, or threaten to cause, serious difficulties for the smooth operation of the economic and monetary union or the balance of payments of the EU;

(o) to include provisions on tax good governance and transparency standards that reaffirm the parties’ commitment to implementing international standards in the fight against tax fraud, evasion and avoidance, in particular the relevant OECD Base Erosion and Profit Shifting recommendations, and that include requirements for automatic exchanges of information and the establishment of public registers of beneficial ownership for business trusts and concrete provisions in the chapters on financial services, capital movement and establishment, towards the exclusion of undetected tax planning by corporations;

(p) to recall that corruption undermines human rights, equality, social justice, trade and fair competition, impeding economic growth; to explicitly commit the parties, through the inclusion of a specific section outlining clear and strong commitments and measures, to combat corruption in all its forms and to implement international standards and multilateral anti-corruption conventions;

(q) to consider that strong provisions on the opening of public procurement, promoting the most advantageous tender principle which includes social, environmental and innovative criteria, simplified procedures and transparency for bidders, including effective access for those from other countries, can also be effective tools to combat corruption and foster integrity in public administration, while providing value for money to taxpayers; to deliver in a modernised AA improved access to public procurement markets, including at sub-central level,
and transparent procedures based on national treatment, impartiality and fairness;

(r) to ensure that investment policy includes good governance and investment facilitation, and to develop and enshrine investors’ obligations while improving the protection of investors;

(s) to ensure that the negotiating directives instruct the Commission to negotiate a modern investment chapter, taking into account best practices internationally, such as the United Nations Conference on Trade and Development (UNCTAD) Investment Policy Framework for Sustainable Development and the latest opinion of the Court of Justice on the EU-Singapore FTA;

(t) to make progress towards a necessary international reform of the dispute settlement regime; to seek a commitment by all parties to prioritise recourse to competent courts and replace investor-to-state dispute settlement (ISDS) with a public investment court system (ICS) with an appeal mechanism, strict rules on conflict of interest and an enforceable code of conduct; to consider investors’ obligations and to preserve the right to regulate to achieve legitimate public policy objectives such as those related to health and water distribution, as well as labour and environmental protection; to aim to prevent frivolous litigation and include all democratic procedural guarantees, such as the right to non-discriminatory access to justice (with particular attention to SMEs), judicial independence, and transparency and accountability, while working towards the establishment of a multilateral investment court (MIC);

(u) to ensure that the modernised AA contains a robust and ambitious TSDC that includes binding and enforceable provisions which are subject to suitable and effective dispute settlement mechanisms, which consider, among various enforcement methods, a sanctions-based mechanism, and which enable social partners and civil society to participate appropriately; to consider that the TSDC should cover, inter alia, the parties’ commitment to adopting and maintaining in their national laws and regulations the principles enshrined in core ILO conventions and to implementing up-to-date ILO instruments effectively, especially the governance conventions, the Decent Work Agenda, ILO Convention No 169 on the rights of indigenous peoples, the Convention on Equal Opportunities and Equal Treatment for Men and Women Workers, the Convention on Domestic Workers, and the Workers with Family Responsibilities Convention, labour standards for migrant workers, and CSR, including the uptake of sectoral OECD guidelines and UN Guiding Principles on Business and Human Rights and a procedure whereby the social partners and civil society assembled in the JCC can call for the launch of government consultations;

(v) to ensure, with reference to the progress achieved by Chile in bilateral trade negotiations with Uruguay and Canada, that the parties include a specific chapter on trade and gender equality and women’s empowerment, beyond the parties’ adherence to and respect for international human rights, labour and social standards, foreseeing active measures aiming to enhance opportunities for women to benefit from the opportunities provided by the AA; to provide for measures aimed at, inter alia, a better work-family life balance and access to
social and health services; to ensure, inter alia, that the parties commit to collecting disaggregated data allowing for thorough ex ante and ex post analysis on the impact of the modernised AA on gender equality; to pursue an enhanced participation of women enterprises (particularly micro-enterprises and SMEs) in public procurement, building on the experience of the Chilean Ministry of Gender Equality which, in 2015, established a supporting programme to strengthen women entrepreneurs’ participation as suppliers in the public procurement market of ‘Chile Compras’; to support the internationalisation of women enterprises and the participation of women in Mode 4 opportunities; to ensure the inclusion of gender equality expertise in the negotiating teams and periodic discussions on the implementation of this chapter within the JCC, which should also integrate organisations that promote gender equality;

(w) to include, moreover, a comprehensive chapter on micro-enterprises and SMEs foreseeing substantial progress in terms of trade facilitation, the elimination of trade barriers and unnecessary administrative burdens, as well as active measures aiming to ensure that the resulting opportunities are sufficiently usable and communicated to all main and potential actors (i.e. though the establishment of single windows, dedicated websites and the publication of sectoral guidebooks with information on procedures and new opportunities for trade and investment);

(x) to include an energy chapter that would cover, inter alia, renewable energy and raw materials; to acknowledge the importance of the implementation of multilateral environmental agreements, notably the Paris Agreement on Climate Change, to include trade-related provisions and commitments to engage in international instruments, negotiations and mutually supportive trade and environmental policies responding to the objectives of the circular economy, including commitments on green growth, and to support and further promote trade and investment in environmental goods and services and renewable energies, as well as climate-friendly technologies;

(y) to adopt negotiating directives which reinforce the animal welfare provisions included in the current AA through the establishment of effective bilateral cooperation on the matter and conditional liberalisation for when animal welfare is put at risk in the production of certain products;

(z) to adopt negotiating directives that spell out requirements to address enforcement of competition law, provisions on sanitary and phytosanitary (SPS) measures, to reflect the principles of transparency, procedural fairness and non-discrimination as well as rules regarding subsidies;

(aa) to bear in mind that any trade agreement must enshrine consumer welfare as one of the overall objectives and to ensure that the AA commits the parties to a high level of consumer safety and protection, and adherence to the highest international standards, and to develop coherent best practice, particularly regarding the protection of consumers in the fields of financial services, product labelling and e-commerce;

(ab) to accept that the negotiations must result in strong and enforceable provisions covering the recognition and protection of all forms of intellectual property
rights, including ambitious provisions on geographical indications (GIs) building upon but extending those contained in the existing AA, ensuring better market access, an enhanced enforcement and the possibility to add new GIs; to ensure that the revised AA includes an IPR chapter that guarantees the necessary flexibility and that IPR-related provisions do not undermine access to affordable, essential medicines and medical treatment under domestic public health programmes; to ensure that this chapter goes beyond the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);

(ac) to ensure that the parties guarantee the highest possible level of transparency and participation, ensuring that the objectives of the negotiations are fulfilled, and that this involves constant and duly informed dialogues with all the parties concerned, which comprise both stakeholders, such as business and trade unions, and civil society, including indigenous representatives; to involve systematically, in this regard, both the competent parliamentary bodies, particularly the EU-Chile IPC and the JCC, throughout the full life cycle of the AA, from negotiations to implementation and evaluation, and to support, with regard to the implementation phase, the creation of an official Chilean civil society participation body reflecting the pluralism of Chilean society, attaching particular attention to its indigenous peoples; to ensure to this end, without undermining the EU’s negotiating strategy, together with Chile, that all relevant information is published in the most accessible way to the general public, including fact sheets translated into Spanish as the shared official language;

(ad) to bear in mind Parliament’s calls for mandates for trade negotiations to be made accessible to the public and to publish the negotiating directives for the modernisation of the AA immediately after their adoption;

(ae) to ensure that the AA provides the necessary mechanisms so that it is respected in practice during implementation, including a modern, effective state-to-state dispute settlement mechanism;

2. Instructs its President to forward this recommendation to the Council, the Commission, the EEAS, the Governments and Parliaments of the Member States, and to the Government and Parliament of the Republic of Chile.