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DRAFT REPORT

on a European Parliament recommendation 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))

Committee on International Trade

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MOTION FOR A EUROPEAN PARLIAMENT RECOMMENDATION

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 Communication from the Commission of 14 October 2015 entitled ‘Trade for All – Towards a more responsible trade and investment policy’ (COM(2015)0497)⁴ and to the Commission reflection papers of May 2017 on ‘Harnessing Globalisation’⁵ and ‘Social Dimension of Europe’⁶,
- 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 documents⁷, and having regard to the Opinion 2/15 of the Court of Justice of 16 May 2017⁸,
- having regard to its recommendations to the Commission for the negotiations for the Trade in Services Agreement (TiSA) of 3 February 2016⁹,
- 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 responsibility¹⁰, and of 25 November 2010 on international trade policy in the context of climate change imperatives¹¹,

¹ OJ L 352, 30.12.2002, p. 3–1450.

² Council Press Release 197/15, 21.4.2015.

³ <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-eu-chile-jcc-01-declaration>

⁴ <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52015DC0497>

⁵ https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-globalisation_en.pdf

⁶ https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-social-dimension-europe_en.pdf

⁷ <https://www.ombudsman.europa.eu/en/cases/decision.faces/en/58668/html.bookmark>

⁸ http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=req&docid=190727&occ=first&dir=&cid=472669

⁹ Text adopted, P8_TA(2016)0041.

¹⁰ Text adopted, P8_TA(2016)0298.

¹¹ OJ C 99E, 3.4.2012, p. 94–101.

- 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’¹ ,
 - 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 2016² , and which Chile has also ratified,
 - having regard to the Joint Declaration of the EU-Chile Joint Parliamentary Committee (JPC) of 3 November 2016³,
 - 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 report of the Committee on International Trade (A8-0000/2017),
 - having regard to Rule 108(4) and 52 of its Rules of Procedure,
- 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 promote effective multilateralism and respect for human rights, as well as shared prosperity and security within a rules-based global system;
- C. whereas the current AA, including its trade pillar, was concluded in 2002⁴ and has worked well between the parties during its implementation since 2003, doubling trade in goods and seeing an increasing trade in services and investments⁵; considering, however, that both the EU and Chile have concluded more modern and ambitious trade agreements ever 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

¹ http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU%282017%29558764

² http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

³ <http://www.europarl.europa.eu/cmsdata/113103/1107500EN.pdf>

⁴ http://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC_2&format=PDF

⁵ <http://ec.europa.eu/trade/policy/countries-and-regions/countries/chile/>

2015 the value of 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 billion¹;

- E. whereas the current AA lacks, among chapters, a trade and sustainable development chapter (TSDC);
- F. whereas any EU trade negotiation must preserve the right and ability of all parties to regulate in order to achieve legitimate public policy objectives, such as the protection and promotion of public health, social services, social and consumer protection, public education, safety, environment, 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 a sanctions-based mechanism is needed to redress infringements effectively;
- H. whereas Article 8 TFEU requires the Union to 'aim to eliminate inequalities, and to promote equality, between men and women', and whereas Chile is a likeminded partner that is strongly committed to this goal;
- I. whereas the EU-Chile JCC, comprising civil society organisations from both parties, 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;
- J. whereas the EU and Chile have been engaged in plurilateral negotiations to further liberalise trade in services (TiSA);
- K. 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);
- L. whereas even if Article 45 of the 2002 EU-Chile AA already 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', it does not include any particular and binding objective or benchmark in the area of trade²;
- M. whereas Chile is a signatory to the Trans Pacific Partnership (TPP), the future of which appears currently uncertain, and Chile has signed FTAs with all TPP signatories and is

¹ http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113364.pdf

² http://trade.ec.europa.eu/doclib/docs/2012/august/tradoc_149881.pdf

widely considered a stable and reliable partner;

- N. whereas in 2010 Chile became the first South American country to become a member of the OECD, has a sound macroeconomic framework and keeps working towards more inclusive growth;
- O. whereas it is important to maximise the potential opportunities introduced by the current AA and the modernisation of its trade pillar in the most inclusive manner, and whereas the dissemination of accessible information, in particular for SMEs, could trigger an important multiplying effect of benefits for the parties of the AA;
- P. 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;
1. Recommends the following to the Council, the Commission and the EEAS:
- (a) to bear in mind that the European Parliament will have to decide on granting consent to the conclusion of the modernised AA with Chile, including its trade pillar, and that ratification processes by Member States could follow in case of provisions of shared competence;
- (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 delivers shared growth, equal opportunities, decent jobs and sustainable development, including the respect and promotion of labour and environmental standards 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, 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 subject to intense debate in Europe and elsewhere, because of the unequal distribution of its gains, and to consider that it is necessary to guarantee a more inclusive distribution of the benefits of trade and to provide adequate protection to those which may be disadvantaged in the process, while developing policy action in other spheres beyond the provisions of trade agreements themselves, going from industrial to 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 social, environmental and political values at the core of the

modernisation process and to make it explicitly clear that a horizontal human rights clause applies throughout the entire AA, including its trade part;

(g) to ensure that a modernised AA guarantees, throughout the entire text, and enshrines, explicitly and unequivocally, the right and the 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 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;

(h) on the negotiations on trade in goods, to seek ambitious improvements to market access across tariff lines, lifting unnecessary barriers, while respecting that there are a number of sensitive agricultural and industrial products which should be given appropriate treatment, for example through tariff-rate quotas (TRQs) or allocated adequate transition periods; 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 injuries 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 to market access and provide national treatment via a positive list schedule; to consider that commitments should be taken building on the General Agreement on Trade in Services (GATS) and that rules should be updated as necessary to account for new developments;

(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 regards to requirements, qualifications and licences, and to foresee, in this regards, institutional mechanisms for systematic consultation to all actors concerned and, in particular, to 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, all EU and Member States labour rights, conditions and social security systems are applicable to the employment of workers benefitting from Mode 4 commitments;

(m) to ensure that any cooperation on regulatory matters remains voluntary, respect the autonomy of regulatory authorities, must be purely based on enhanced information exchange and administrative cooperation with a view to identifying unnecessary

barriers and administrative burdens, and must 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 ensure and explicitly foresee that the modernised AA does not prevent 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 nor preclude governments from expanding the range of services they supply to the public, and that it will not 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;

(o) 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 regards 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;

(p) to mandate the inclusion of a tax good governance clause that reaffirms the parties' commitment to implement international standards in the fight against tax evasion, avoidance and elusion, and that includes obligations for country-by-country reporting, automatic exchanges of information and the establishment of public registers of beneficial ownership;

(r) to clearly spell out in the negotiating directives the requirement to commit the parties to promote corporate social responsibility (CSR) via binding standards, including with regard to internationally recognised instruments, and the uptake of sectorial OECD guidelines and the UN Guiding Principles on Business and Human Rights; to recall the need to respect and ensure the effective implementation of indigenous' rights, including ILO standards on indigenous' labour rights and the right to consultation with governmental authorities;

(s) to recall that corruption undermines human rights, equality and social justice, and is a major non-tariff barrier to trade impeding economic growth; to explicitly commit the parties, and to include a specific section on measures, to combat corruption in all its forms and implement international standards and multilateral anti-corruption conventions;

(t) to consider that openness of public procurement markets, simplified procedures and transparency for bidders, including 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, in terms of the quality of delivery, efficiency, effectiveness and accountability; 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;

(u) to ensure that investment policy goes beyond merely protecting investment to also include good governance, facilitation and investor obligations;

(v) 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;

(w) to consider that negotiations on investment may be an opportunity to make progress towards a necessary international reform of the dispute settlement regime, to seek a commitment by all parties to put an end to investor-to-state dispute settlement (ISDS) based on ad hoc private arbitration, and to replace it with a public investment court system (ICS) with an appeal mechanism, with a view to preserving the right to regulate to achieve legitimate public policy objectives, prevent frivolous litigation and guarantee all democratic procedural guarantees, such as the right to access to justice (with particular attention to SMEs), judicial independency, transparency and accountability, while pursuing the establishment of a multilateral investment court (MIC);

(x) to ensure that the modernised AA contains a robust and ambitious TSDC that includes binding and enforceable provisions, subject to dispute settlement mechanisms, with the possibility of imposing sanctions in case of breach; considers that the TSDC should cover, among other things, the parties' commitment to adopt and maintain in their national laws and regulations the principles enshrined in core ILO conventions and to effectively implement up-to-date ILO instruments, especially the Governance Conventions, the Decent Work Agenda, ILO Convention n°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, as well as labour standards for migrant workers;

(y) 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 that specifically contains clear and measurable targets, beyond the adherence of the parties and their 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 ensure, inter alia, that the parties commit to collect 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 program 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 WTO Mode 4 opportunities; and to ensure that this chapter foresees the involvement of women organisations and gender equality experts in the negotiating teams, as well as in the JCC (foreseeing the development of innovative means of consultation, such as electronic discussions) and that it guarantees periodical substantial discussions on gender and trade, if necessary, with the establishment of a specific consultative

subcommittee;

(z) to include as well a dedicated chapter on micro-enterprises and SMEs foreseeing substantial progresses 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. through the establishment of single windows, dedicated websites and the publication of sectorial guidebooks with information on procedures and new opportunities for trade and investment);

(aa) 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 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;

(ab) 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;

(ac) 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;

(ad) 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 an enhanced enforcement and the possibility to add new GIs; to ensure that any IPR-related provisions must not undermine access to affordable essential medicines under domestic public health programmes;

(ae) to ensure that the parties guarantee a maximum 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 parties concerned, particularly the social partners and civil society; to involve systematically, in this regard, both the competent parliamentary bodies, particularly the EU-Chile JCC and the JCC, throughout the full life-cycle of the AA, from negotiations to implementation and evaluation, and to support the creation of an official Chilean civil society participation body reflecting the pluralism of Chilean society, attaching particular attention to its indigenous peoples; to this aim, to ensure, 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;

(af) to bear in mind Parliament's calls for mandates for trade negotiations to be made

accessible to the public, to publish the negotiating directives for the modernisation of the AA immediately after their adoption;

(ag) to ensure that the AA provides the necessary mechanisms ensuring that it is respected in practice during implementation, including a modern, effective state-to-state dispute settlement mechanism, with public hearings, with the possibility for all relevant actors to submit written observations (amicus curiae briefs) and also providing for the option to resort to mediation before recourse to dispute settlement is sought;

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.