

REPORT ON THE 9TH ROUND OF NEGOTIATIONS BETWEEN THE EU AND CHILE FOR THE MODERNISATION OF THE TRADE PART OF THE EU CHILE ASSOCIATION AGREEMENT

The 9th round of negotiations for the modernisation of the Trade part of the Association Agreement took place from 11 to 22 January 2021.

The round was preceded by a visit of Chilean Foreign Affairs Minister Allamand to Brussels in December who discussed the negotiations during a meeting with Executive Vice President Dombrovskis.

During the round, the Parties managed to close the chapter on Transparency while the provision on Anti-Fraud was closed during an intersessional meeting in December.

On other chapters, there was substantial progress with only a few pending issues to be solved. This is the case for the chapters on Subsidies and Competition, Rules of Origin, Customs and Trade Facilitation and Trade Defence and Good Regulatory Practices. Good progress was achieved also on parts of Intellectual Property Rights, and Trade and Sustainable Development (in particular on labour provisions) and Energy and Raw Materials.

Constructive discussions took place also on Investment (liberalisation and protection), Services and Financial Services, State Owned Enterprises, Trade and Gender, Government Procurement, Energy and Raw Materials, Technical Barriers to Trade (including car annex) and protection of Geographical Indications. However, there is still a considerable number of issues pending in these chapters; intersessional work will be necessary to move towards common ground before the next round, tentatively scheduled for 19 to 30 April 2021.

The results in specific areas are as follows:

1. Trade in Goods

The parties continued the discussion on few outstanding articles in this chapter, notably on origin marking, remanufactured goods and Chile's request for exemption of used cars from the import/export restriction clause. The EU's request to recognize the EU as a "country of origin" for the purpose of labelling requirements is still being considered by Chile.

2. Rules of Origin

The parties continued with constructive discussions and agreed a further six articles as well as one section in the Annex to the Rules of Origin. Progress was made on outstanding issues although more work is needed to conclude in respect of cumulation, the product specific rule of origin for Chapter 16 and certain aspects of the origin procedures.

3. Technical Barriers to Trade

The EU and Chile made progress on several outstanding provisions of the TBT Chapter, in particular on regulatory cooperation and cooperation on market surveillance and non-food product safety and compliance. Both sides also exchanged views on institutional mechanism

for the Chapter (Chapter Coordinator). Some areas will require further discussions, in particular conformity assessment and motor vehicles annex.

4. Investment

The EU and Chile agreed the architecture of the Investment Chapter, and reviewed all of its provisions. The Parties advanced text consolidation, continuing their discussions on the outstanding provisions, including definitions and substantive disciplines on investment liberalisation (Performance Requirements Article) and investment protection (Fair and Equitable Treatment, Compensation for losses, and Observance of written commitments). The Parties also discussed the Capital Movements Chapter, where the main outstanding issue relates to the different circumstances for the application of restrictive measures.

5. Investment Court System

The EU and Chile continued to discuss the Investment Court System (ICS) as proposed by the EU. Some progress was achieved on certain substantive aspects of the proposal, with discussions touching upon how to ensure and maximise the efficiency and overall well-functioning of the mechanism. More particularly, discussions covered issues related to the functioning of the first instance and appeal tribunal, the appointment and remuneration of adjudicators and the access of investors to the mechanism.

Discussions also covered the procedural aspects governing the functioning of the ICS, notably issues connected to ethics and a Code of Conduct for adjudicators, transparency of proceedings and documentation, third party funding, security for costs, expert reports, objections and consolidation and discontinuance of proceedings.

6. Trade in Services

The Parties reviewed the agreed benchmark-offers for the current negotiation and the EU highlighted some elements contained in the EU-UK Agreement. The Parties asked and answered questions on the intention and meaning of their respective reservations.

7. Financial Services

The Parties reviewed all the provisions related to financial services (with the exception of those on committees, dispute settlement and investment protection, which need to be examined by different EU and Chilean negotiating teams). The Parties advanced text consolidation substantially, in particular with regard to the provisions on scope, definitions, Most Favoured Nation, recognition of prudential measures and international standards. Chile proposed a new text on transparency and domestic regulation incorporating domestic regulation disciplines that the EU will further consider. Important divergences persist with regard to the inclusion of disciplines on performance requirements.

8. Intellectual Property Rights

Chile and the EU discussed the textual proposals on intellectual property rights (IPR). The discussions covered the general provisions of the Chapter as well as copyright, trademarks, designs, patents, protection of undisclosed information and enforcement, including border measures. The discussions allowed the Parties to improve their understanding of each other's

position on a number of areas and exchange compromise proposals that led to progress on copyright, trade secrets and civil enforcement.

9. Geographical Indications

Both parties discussed possible conflicts between GIs, which the EU seeks to protect under a bilateral agreement, notably, for instance, as regards potential conflicts with existing trademarks in Chile.

The EU also informed about the state-of-play of assessing the GIs, which Chile has submitted for protection under the agreement.

In addition, exchanges on the text provisions continued, whereby both parties exchanged views on a variety of elements such as key concepts for protection, the institutional architecture, co-existence with trademarks and enforcement.

Both parties agreed to reflect further on these key elements and to continue discussions on conflicts of protection with the aim to find solutions.

10. Government Procurement

The Parties continued to discuss the rules applying to government procurement as laid down in the text of the government procurement chapter, and the respective market access offers. On market access, further discussion will be needed. The EU submitted comments on Chile's updated market access offer of October 2020. Chile signalled some sensitivities with regard to coverage of SOEs in the utilities fields. Parties also discussed the scope of coverage on works concessions. On text, the discussions allowed the Parties to improve their understanding of each other's position on a number of areas that will require more discussions in the future, such as for example on the EU request for further transparency in Government Procurement procedures through one single procurement portal.

11. State Owned Enterprises

The parties had a good discussion, the main outstanding issues relate to the scope of application of the non-discriminatory treatment provisions and the coverage of SOEs under a certain threshold of annual income.

12. Customs and Trade Facilitation

The chapter is almost closed. The parties had a good discussion and made some progress on the few outstanding issues related to temporary admissions, custom brokers, and the committee and authorised economic operators.

13. Competition and Subsidies

The parties have a very good discussion and made good progress. The main pending issue relates to Chile's request to have a consultation mechanism on agricultural subsidies.

14. Trade Defence Instruments

Parties discussed the text in a constructive ambiance. Significant progress was made in all sections. With regard to anti-dumping/anti-subsidy: the only pending issue is the provision on "green box" payments to agriculture proposed by the EU. Regarding global safeguards, the

parties discussed “least disturbing form of measure” and consultations before the imposition of measures. On bilateral safeguards, a significant part of the text was cleaned. An agreement was reached on the possibility to apply provisional measures and having a provision on outermost regions, both for the EU and Chile. Other pending issues are: the timeframe regarding the obligation to provide compensations, the right to suspend concessions, and agricultural safeguards.

15. Trade and Sustainable Development (TSD)

The group had in-depth discussions on most provisions of the trade and sustainable development chapter, where possible working on compromise texts, and otherwise identifying more clearly similarities and divergences. Together with the Gender group, both sides discussed the possibility of applying the same institutional arrangements to TSD and gender provisions.

The group made good progress on articles related to objectives, responsible business conduct, public awareness, information, participation and procedural guarantees, cooperation activities, environment (wild flora and fauna), labour provisions, and institutional arrangements (TSD sub-committee and consultations).

Further discussion is needed on articles related to right to regulate/upholding levels of protection, scientific and technical information, transparency, environment (objectives, Multilateral Environmental Agreements, climate change, forestry, biodiversity, fisheries), institutional arrangements (panel of experts).

16. Trade and Gender

The group made good progress in clearing some of the paragraphs covering context and objectives, multilateral agreements, commitments and cooperation activities. Together with the TSD group, both sides discussed the possibility of applying the same institutional arrangements of TSD and gender provisions.

A few areas and articles still need further discussion and consultations such as objectives, commitments on multilateral agreements, commitments contained under Article 3 (notably non-regression) as well as institutional arrangements (i.e. committee, government consultations and panel of experts).

17. Good Regulatory Practices

The Parties made good progress in the Chapter and discussed in particular articles on definition of regulatory measures, scope, early information on planned regulatory measures, public consultations and retrospective evaluations.

18. Energy and Raw Materials

The round addressed all substantial aspects of the Chapter based on the respective text proposals and the Parties made significant progress on a series of provisions. Important issues however remain open, including with regard to export restrictions, the relationship between the chapter and other parts of the trade title, cooperation / dialogue oriented provision and Environmental Impact Assessments.

19. Transparency

EU and Chile agreed the last outstanding provisions in the Chapter – the clarification of the objective article and the definition of administrative ruling of general application. The Chapter is finalised.

20. General Exception

Progress was made on provisions concerning disclosure of information, relationship with WTO rules, and parts of the security and general exceptions provisions. Chile raised a few questions, in particular with regard to the coverage of the exceptions and the text as proposed by the EU.