

This document contains an EU proposal for Trade and Gender Equality provisions of a possible modernised EU-Chile Association Agreement. It has been tabled for discussion with Chile. The actual text in the final agreement will be a result of negotiations between the EU and Chile. The EU reserves the right to make subsequent modifications to this proposal.

Draft provisions on Trade and Gender Equality in the context of the Modernisation of the EU-Chile Association Agreement

Article 1

Context and objectives

1. The purpose of these provisions is to strengthen Parties' trade relations and cooperation in ways that effectively provide equal opportunities and treatment for women and men to benefit from the provisions in Title xxx [Trade Part] of this Agreement, including in matters of employment and occupation, in accordance with their international commitments.
2. The Parties emphasise the important contribution by women to economic growth through their participation in economic activity, including international trade. They acknowledge the importance of incorporating a gender perspective into the promotion of inclusive economic growth. This includes removing barriers to women's participation in the economy, including strong segregation of work functions, and international trade and the key role that gender-responsive policies play in achieving sustainable development.
3. The Parties recognise that inclusive trade policies can contribute to advancing women's economic empowerment and equality between men and women, which has a positive impact on economic growth, and underline their intention to implement the provisions in Title xxx [Trade Part] of this Agreement in a manner that promotes and enhances equality between men and women.
4. The Parties are mindful that trade liberalisation may affect men and women in different ways as workers, producers, traders or consumers and recognise that further information is needed to better understand such differential impacts.
5. The Parties recall their obligations under Article [General Principles clause] to apply equal rights for men and women, including economic rights such as the right to own property as set out in the United Nations Universal Declaration of Human Rights and the United Nations Covenant on Social and Economic Rights and reaffirm their commitments under other international instruments including:

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- a) the 2030 Agenda for Sustainable Development and the global Sustainable Development Goals, in particular, Sustainable Development Goal 5 to achieve gender equality and empower all women and girls;
 - b) the Addis Ababa Action Agenda which recognises the critical role of women as producers and traders, and foresees to address their specific challenges in order to facilitate women's equal and active participation in domestic, regional and international trade;
 - c) the Beijing Declaration and Platform for Action, its strategic objective to promote women's economic rights and independence, and the provisions related to international and regional trade agreements;
 - d) the Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017.
6. The Parties recognise that it is their aim to strengthen their trade relations and cooperation in ways that promote equality between men and women, without prejudice to the right of each Party to establish its own scope and levels of protection for equality of opportunities for men and women and to adopt or modify accordingly its relevant laws and policies, consistent with the principles of internationally recognised standards or agreements, referred to in Article 2 (Multilateral Agreements).

Article 2

Multilateral Agreements

1. Each Party reaffirms its commitment to effectively implement as part of its laws and practices international conventions pertaining to gender equality or women's rights that it has ratified, in particular:
 - 1.1. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the United Nations General Assembly on December 18, 1979, and its provisions related to eliminating discrimination against women in economic life and in the field of employment;

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- 1.2. The fundamental ILO Conventions, in particular ILO Convention 100 on Equal Remuneration and ILO Convention 111 concerning Non-Discrimination in Respect of Employment and Occupation.

Article 3

Trade, non-discrimination, and equality between women and men

1. Without prejudice to their respective market access commitments under this Agreement, the Parties shall uphold their laws and policies promoting gender equality and improving women's access to the economic opportunities arising from the Parties' enhanced trade relationship through Title xxx [Trade Part] of this Agreement.
2. The Parties shall, when relevant, take into account the objective of equality between men and women when formulating, implementing and reviewing measures in the areas covered under Title xxx [Trade Part] of this Agreement.
3. The Parties undertake to gather and exchange information on the effects of trade liberalization on women and men with a view to better understanding the different impacts of trade policy instruments on women and men.
4. The Parties commit to encourage trade and investment by, inter alia, promoting equal opportunities and participation for women and men in the economy and international trade, including through measures that:
 - a) progressively eliminate direct or indirect discrimination on grounds of sex in relation to the economic opportunities arising from the Parties' enhanced trade relationship through Title xxx [Trade Part] of this Agreement;
 - b) progressively eliminate direct or indirect discrimination on grounds of sex with the aim to implement the principle of equal pay for work of equal value and to close the gender pay gap;
 - c) facilitate that women are not treated less favourably than men or subject to discrimination in employment for reasons of pregnancy and maternity;
5. The Parties shall not encourage trade or investment by weakening or reducing the protection granted to equality of opportunities for women and men, under their respective laws.

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6. The Parties shall not waive or otherwise derogate from their respective laws that protect the equality of opportunities for men and women in order to encourage trade or investment.
7. The Parties shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce their respective laws that protect the equality of opportunities for men and women in order to encourage trade or investment.

Article 4

Cooperation Activities

1. The Parties agree to work together on trade-related aspects of gender equality policies in order to achieve the objectives of Title xxx [Trade Part] of this Agreement.
2. The Parties shall carry out cooperation activities designed to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and fully benefit from the opportunities created by Title xxx [Trade Part] of this Agreement. These activities shall be carried out with inclusive participation of women.
3. Areas of such cooperation may include:
 - a) Sharing experiences and best practices relating to:
 - i) Policies and programmes to maximise positive impacts of women's increased participation in international trade;
 - ii) Public and private initiatives aimed at the promotion of female entrepreneurship and trade, including by integration of women in formalised sector of the economy;
 - iii) Policies and programmes to improve women's digital skills and access to online business tools;
 - iv) Initiatives aimed at the promotion of decent quality jobs through trade, including the prevention of discrimination based on sex, the safety and health at work of pregnant workers and workers who have recently given birth, as well as work-life balance measures such as the access to flexible working arrangements, or the access to parental leave and affordable childcare;

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- v) Initiatives aimed at the promotion of women's full participation in trade by encouraging capacity-building and skills enhancement of women at work and in education, in particular in professions and activities in which they are underrepresented, for example by encouraging girls in Science, Technology, Engineering, and Mathematics (STEM);
 - vi) Initiatives aimed at increasing women's participation in decision-making positions in trade in the public and private sectors (including on corporate boards);
 - vii) The potential impact of trade facilitation in providing equal access and opportunities for women entrepreneurs;
 - viii) The possible ways increased women's participation in international trade may contribute to reducing the gender pay gap;
- b) Collection of sex-disaggregated data and analysis of impacts of trade policies on women and men:
- i) Sharing best practices for conducting gender-based analysis of trade policies and for the monitoring of their effects;
 - ii) Sharing methods and procedures for the collection of sex-disaggregated data, the use of indicators, monitoring and evaluation methodologies, and the analysis of gender-focused statistics related to trade;
 - iii) Sharing data and best-practices for analysing the impact of trade on gender segregation in the labour market, on the working conditions of women in export-oriented industries and sectors, and on gender-specific constraints in access to productive resources, infrastructure and services.
- c) Awareness raising on the importance of gender equality for sustainable economic growth and relevance for trade policy, including among the male population.
- d) Cooperation within the framework of the WTO, ILO, OECD and other international organisations as well as with third countries, where relevant, to maximise the positive impacts of increased women's participation in international trade, including by implementing core international conventions on social and economic rights for women.

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Article 5

Institutional arrangements

1. The Parties hereby establish a Sub-Committee on Trade and Gender.
2. Sub-Committee on Trade and gender:
 - 2.1. shall be composed of representatives of the European Union, on the one side, and of representatives of Chile, on the other;
 - 2.2. shall meet within a year of the date of entry into force of this Agreement and, thereafter, once per year or at the request of either Party or of the Joint Committee, at an appropriate level. When in person, meetings shall be held alternately in Brussels or Chile. Meetings may also be held by any technological mean available to the Parties;
 - 2.3. shall be co-chaired by both Parties.
3. The Sub-Committee on Trade and Gender shall have the following functions:
 - 3.1. monitor and review the implementation and operation of [these provisions/this protocol], and make appropriate recommendations to the Joint Committee;
 - 3.2. propose cooperation activities on issues covered by [these provisions/this protocol] as described in Article 4;
 - 3.3. at a written request of a Party addressed to the contact point established under Article 5.5, to meet promptly and endeavour to reach a mutually satisfactory solution of a matter referred to consultations or a panel of experts pursuant to Articles 6 or 7 respectively.
 - 3.4. carrying out other tasks assigned by the Joint Committee, including coordinating on aspects related to trade and gender with other sub-committees, working groups and subsidiary bodies established under this Agreement;
4. When interacting with civil society on the implementation of these provisions, the Parties shall promote balanced representation and the participation of organisations promoting

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equality between men and women¹ (cross-reference to the provisions on the involvement of civil society in the implementation of this Agreement).

5. Each Party shall designate a contact point within its administration to facilitate communication and coordination between the Parties on any matter relating to the implementation of [these provisions/this protocol]. Each Party will communicate its Contact Point to the other Party.

Article 6

Government Consultations

1. The Parties shall make all efforts through dialogue, consultation, exchange of information and cooperation to address any disagreement on the interpretation or application of [these provisions/this protocol].
2. In the event of disagreement between the Parties regarding the interpretation or application of [these provisions/this protocol], the Parties shall only have recourse to the procedures established under this Article (Government Consultations) and Article 7 (Panel of Experts). Chapter [XX] (Dispute Settlement) shall not apply to [these provisions/this protocol].
3. A Party may request consultations with the other Party regarding the interpretation or application of [these provisions/this protocol] by delivering a written request to the contact point of the other Party established in accordance with Article 5.5. The request shall set out the reasons for requesting consultations, including a description of the matter at issue and its relation to the provisions of [these provisions/this protocol]. Consultations shall start promptly after a Party delivers a request for consultation, in any event not later than 30 days of the date of receipt of the request unless the Parties agree to a longer time period. If the consultations are held in person they shall be held in the territory of the Party to whom the request is made, unless the Parties agree otherwise.
4. The Parties shall enter into consultations with the aim to reaching a mutually satisfactory resolution of the matter. In matters related to the multilateral agreements referred to in [these provisions/this protocol], the Parties shall take into account information from the

¹ Note: this provision will need to be consistent with the horizontal provisions on the involvement of civil society in the implementation of this Agreement

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ILO or relevant multilateral organisations or bodies in order to promote coherence between the work of the Parties and these organisations. Where relevant, the Parties shall seek advice from such organisations or bodies, or any other expert or body they deem appropriate.

5. Each Party may, if appropriate, seek the views of the ... [*domestic civil society bodies set up under the Agreement*] referred to in Article ... of Chapter ... or other expert advice.
6. Any resolution reached by the Parties shall be made publicly available.

Article 7

Panel of Experts

1. If, within 90 days of a request for consultation under Article 6.3, no mutually satisfactory resolution has been reached, a Party may request the establishment of a Panel of Experts to examine the matter. Any such request shall be made in writing to the contact point of the other Party established in accordance with Article 5.5. The request shall identify the reasons for requesting the establishment of a Panel of Experts, including a description of the matter at issue and indication of the relevant provision(s) of [these provisions/this protocol] that it considers applicable.
2. Except as otherwise provided for in this Article, the dispute settlement provisions set out in Chapter ... [*Dispute Settlement*], Section 5 [*Common Provisions*], Articles X.5 [*Establishment of a panel*], X.21 [*Receipt of information*] and paras 3 and 4 of Article X.23 [*Reports and Decisions of the Panel*] as well as the Rules of Procedure in Annex ... and the Code of Conduct in Annex ... to Chapter ... [*Dispute Settlement*], shall apply.

Note: cross references to be fine-tuned in accordance with procedural elements of the general dispute settlement provisions

3. The Sub-committee on Trade and Gender shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 10 individuals who are willing and able to serve on the Panel of Experts. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals that not nationals of either Party and who may serve as chairperson of the Panel of Experts. Each Party shall propose at least three individuals for its sub-list. The Parties shall also select at least four individuals for the list

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of chairpersons. The Sub-committee on Trade and Gender shall ensure that the list is kept up to date and that the number of experts is maintained at least at 10 individuals.

4. The individuals referred in paragraph 3 shall have specialised knowledge of or expertise on issues addressed in [these provisions/this protocol], or the resolution of disputes arising under international agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the disagreement, or be affiliated with the government of any Party, and shall comply with Annex ... [*Code of Conduct*] to Chapter ... [*Dispute Settlement*].
5. If the Panel of Experts is composed according to the procedures set out in paragraphs ... of Article ... [*composition of arbitration panel*] of Chapter ... [*Dispute Settlement*], the experts shall be selected from the relevant individuals on the sub-lists referred to in paragraph 3 of this Article, in accordance with [the relevant provisions] of Sub-Section ... *Composition of arbitration panel* of Section ... [*Dispute Settlement Procedures* of Chapter ... [*Dispute Settlement*].
6. Unless the Parties agree otherwise within five days from the date of establishment of the Panel of Experts, as defined in Article [*composition/establishment of the arbitration panel*] of Chapter ... [*Dispute Settlement*], the terms of reference shall be:

"to examine, in the light of the relevant provisions (Trade and Gender) of [these provisions/this protocol] of the EU-Chile Association Agreement, the matter referred to in the request for the establishment of the Panel of Experts, and to issue a report, in accordance with Article 7 (Panel of Experts) of [these provisions/this protocol], with its findings and recommendations for the resolution of the matter".
7. With regard to matters related to the respect of multilateral agreements referred to in [these provisions/this protocol], the opinions of experts or information requested by the Panel of Experts in accordance with Article ... (*Information and Technical Advice*) of Chapter .. (*Dispute Settlement Procedures*) should include information and advice from the relevant ILO or CEDAW bodies. Any information obtained under this paragraph shall be submitted to both Parties for their comments.
8. The Panel of Experts shall interpret the provisions of [these provisions/this protocol] in accordance with the customary rules of interpretation of public international law, including those codified in the 1969 Vienna Convention on the Law of Treaties.

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9. The Panel of Experts shall issue to the Parties an interim report within 90 days of the establishment of the Panel and a final report no later than 30 days after issuing the interim report. These reports shall set out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations. The Parties shall make the final report publicly available within 15 days of its submission by the Panel of Experts. Either of the involved Parties may submit written comments on the interim report to the Panel of Experts within 45 days of the date of issue of the interim report. After considering any such written comments, the Panel of Experts may modify the report and make any further examination it considers appropriate. Where it considers that the deadlines set in this paragraph cannot be met, the chairperson of the Panel of Experts shall notify the Parties in writing, stating the reasons for the delay and the date on which the Panel plans to issue its interim or final report. The time limits set out in this paragraph may be extended by mutual agreement of the Parties.
10. The Parties shall discuss appropriate measures to be implemented taking into account the report and recommendation of the Panel of Experts. The Party complained against shall inform its ... [domestic civil society mechanism set up under the Agreement] referred to in Article ... of Chapter... and the other Party of its decisions on any actions or measures to be implemented no later than three months after the report has been made publicly available.
11. The Sub-Committee on Trade and Gender shall monitor the follow-up to the report of the Panel of Experts and its recommendations. The ... [civil society mechanisms set up under the Agreement] referred to in Article(s) ... of Chapter ... may submit observations to the [body] in this regard.

Article 8

Review

12. The Parties agree on the importance of monitoring and assessing, jointly or individually, the impact of the implementation of Title xxx [Trade Part] of this Agreement on equality between men and women and opportunities provided for women in relation to trade through their respective processes and institutions, as well as those set up under this Agreement.
13. The Parties may review [these provisions/this protocol] in light of experience gained in their implementation and if necessary suggest how they may be strengthened.