

This document contains an EU proposal for specific horizontal provisions in the Trade Part 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.

PART III (TRADE)

TITLE I

TRADE SPECIFIC HORIZONTAL PROVISIONS

ARTICLE X.1

Establishment of a Free Trade Area

The Parties to this Agreement hereby establish a free trade area, in conformity with Article XXIV of GATT 1994 and Article V of GATS.

ARTICLE X.2

Objectives

The objectives of the Trade Title of this Agreement are:

- a) the expansion and the diversification of trade in goods, in conformity with Article XXIV of GATT 1994, between the Parties, through the reduction or the elimination of tariff and non-tariff barriers to trade;
- b) the facilitation of trade in goods, in particular, through, the agreed provisions regarding customs and trade facilitation, standards, technical regulations and conformity assessment procedures as well as sanitary and phytosanitary measures, while preserving the right of the Parties to regulate to achieve public policy objectives;
- c) the liberalisation of trade in services, in conformity with Article V of GATS;

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- d) the development of a climate conducive to increased investment flows, the improvement of the conditions of establishment on the basis of the principle of non-discrimination;
- e) the facilitation of trade and investment among the Parties including through the free transfer of current payments and capital movements;
- f) the development of an environment favourable to investment by providing transparent, stable and predictable rules guaranteeing fair treatment to investors and the establishment of a court system to solve investor-state disputes in an effective, fair and predictable manner;
- g) the effective and reciprocal opening of government procurement markets of the Parties;
- h) the promotion of innovation and creativity by ensuring an adequate and effective protection of all intellectual property rights, in accordance with international obligations applicable between the Parties;
- i) the promotion of conditions fostering undistorted competition in the economic activities, in particular with regard to trade and investment between them;
- j) the development of international trade in a way as to contribute to sustainable development in its economic, social and environmental dimensions;
- k) the establishment of an effective, fair and predictable dispute settlement mechanism to solve disputes on the interpretation and application of this Part of the Agreement.

ARTICLE X.3

Definitions applicable to Part III [TRADE] of the Agreement¹

¹ Note: at the end of the negotiations, the following definitions will be reviewed with a view to removing from the trade part the definitions of terms that are defined in the same way in the horizontal part of the association agreement: days, existing, juridical person, measure, person, natural person, third country, Vienna Convention.

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Unless otherwise specified, for the purposes of the Trade Title of this Agreement, the below terms shall have the following meaning:

"Agricultural good" means a product listed in Annex 1 to the Agreement on Agriculture;

"Customs duty" means any duty or charge of any kind imposed on or in connection with the importation of a good, not including any:

- (i) charge equivalent to an internal tax imposed in accordance with with Article X.4 (National Treatment on Internal Taxation and Regulation) of the Trade in Goods Chapter;
- (ii) anti-dumping, special safeguard, countervailing or safeguard duty applied in conformity with the GATT 1994, the Anti-dumping Agreement, the Agreement on Agriculture, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards, as appropriate; and
- (iii) fee or other charge imposed on or in connection with importation that is limited in amount to the approximate cost of the services rendered.

"CPC" means the Provisional Central Product Classification (Statistical Papers Series M No.77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

"Days" means calendar days, including weekends and holidays;

"Existing" means in effect on the date of entry into force of this Agreement;

"Good of a Party" means a domestic good as that is understood in the GATT 1994, and includes originating goods of that Party;

"Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, and Chapter Notes;

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"Heading" means the first four digits in the tariff classification number under the Harmonized System;

"Juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

"Measure" includes any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement or practice;²

"Measures of a Party" means any measures adopted or maintained by:³

- (i) central, regional or local governments or authorities; and
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

"Natural person of a Party" means, for the European Union, a national of a Member State of the European Union, and for Chile, a national of Chile, in accordance with their respective applicable legislation⁴;

"Person" means a natural person or a juridical person;

"Sanitary or phytosanitary measure" means any measure referred to in paragraph 1 of Annex A to the SPS Agreement;

² For greater certainty, the term "measure" includes failures to act.

³ For greater certainty, "measures of a Party" covers measures by entities listed in sub-paragraphs (i) and (ii), which are adopted or maintained by instructing, directing or controlling, either directly or indirectly, the conduct of other entities with regard to those measures.

⁴ For the purposes of the Investment and Trade in Services Chapter, the definition of a "natural person of a Party" also includes a natural person permanently residing in the Republic of Latvia who is not a citizen of the Republic of Latvia or any other state but who is entitled, under the laws and regulations of the Republic of Latvia, to receive a non-citizen passport.

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"Third country" means a country or territory outside the territorial scope of application of this Agreement; and

"Vienna Convention on the Law of Treaties" means the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969.

ARTICLE X.4

WTO Agreements

"Agreement on Agriculture" means the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement;

"GATS" means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

"GATT 1994" means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

"Safeguards Agreement" means the Agreement on Safeguards, contained in Annex 1A to the WTO Agreement;

"SCM Agreement" means the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement;

"SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement;

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"TBT Agreement" means the Agreement on Technical Barriers to Trade, contained in Annex 1 to the WTO Agreement;

"TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement; and

"WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

ARTICLE X.5

Relation to the WTO Agreement

1. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement and other agreements to which they are party.
2. Nothing in this Agreement shall be construed as requiring either Party to act in a manner inconsistent with its obligations under the WTO Agreement.

ARTICLE X.6

Right of action under domestic law

A Party shall not provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

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[Negotiator's Note: the agreement will not have direct effect (be self-executing) in the domestic legal systems of the Parties. This will be provided for explicitly in the Institutional, General and Final provisions of the agreement.]

Article X.7

References to laws and other Agreements⁵

1. Unless otherwise specified, where reference is made in the Trade Title to laws and regulations of a Party, those laws and regulations shall be understood to include amendments thereto.
2. Unless otherwise specified in the Trade Title, where international agreements are referred to or incorporated into this Agreement, in whole or in part, they shall be understood to include amendments thereto or their successor agreements entering into force for both Parties on or after the date of signature of this Agreement. If any matter arises regarding the implementation or application of the provisions of this Title as a result of such amendments or successor agreements, the Parties may, on request of either Party, consult with each other with a view to finding a mutually satisfactory solution to this matter as necessary.

TITLE XX

SPECIFIC TASKS IN TRADE MATTERS OF THE BODIES ESTABLISHED UNDER THIS AGREEMENT

ARTICLE X.1

⁵ Note: at the end of the negotiations, this provision will be moved to the Institutional, General and Final provisions of the agreement.

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Specific Tasks of the Association Council acting in trade configuration

The Association Council may:

- (a) adopt decisions to amend the Agreement in the following cases:
- i. Annex XXX (Elimination of Customs Duties), with the object of incorporating one or more goods into the tariff reduction schedule;
 - ii. the Schedules attached to Annex XXX (Elimination of Customs Duties) in order to accelerate tariff dismantling;
 - iii. Appendix XXX, Appendix XXX and Appendix XXX to Annex XXX (Elimination of Customs Duties);
 - iv. Rules of Origin [*to be specified*];
 - v. Annex XXXX (Government Procurement);
 - vi. Annex XXXX (Protected Geographical Indications);
 - vii. Annex XX (Equivalency [SPS chapter]);
 - viii. Annex XX (Rules of Procedure [Dispute Settlement chapter])
 - ix. Annex XX (Code of Conduct for Panelists and Mediators [Dispute Settlement chapter]);
 - x. Annex XXI (Sub-Committees); and
 - xi. Any other provision, protocol, appendix or annex, for which the possibility of such decision is explicitly foreseen in the Trade Part of this Agreement.
- (b) adopt decisions to issue binding interpretations of the provisions of the Trade Part of this Agreement.

ARTICLE X.2

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Specific Tasks of the Association Committee acting in trade configuration

1. The Association Committee shall have, in particular, the following functions when dealing with trade-related matters:
 - a) assist the Association Council in the performance of its functions regarding trade-related matters;
 - b) be responsible for the proper implementation and application of the provisions of the Trade Title of this Agreement. In this respect, and without prejudice to the rights established in Title X (Dispute Settlement and Mediation) of Part III of this Agreement, any Party may refer for discussion within the Association Committee any issue relating to the application or interpretation of the Trade Title of this Agreement;
 - c) oversee the further elaboration of the provisions of the Trade Title of this Agreement as necessary and evaluate the results obtained from its application;
 - d) seek appropriate ways of preventing and solving problems which might otherwise arise in areas covered by the Trade Title of this Agreement; and
 - e) approve the rules of procedures of all Sub-Committees under the Trade Title of this Agreement and supervise their work.
2. In the performance of its duties under paragraph 2, the Association Committee may:
 - a) establish additional Sub-Committees from those established in the Trade Title of this Agreement, composed of representatives of the European Union and of Chile, and assign them responsibilities within its competence. It may also decide to modify the functions that are assigned to the Sub-Committees it establishes, as well as dissolve them;
 - b) adopt the decisions to amend the Agreement or to issue the interpretations referred to in Article X.1 when there is no available meeting of the Association Council.

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ARTICLE X.3

Coordinators of the Trade Title of this Agreement

1. The European Union and Chile shall appoint a Coordinator for the Trade Title of this Agreement, within sixty days after the entry into force of this Agreement and notify each other the contact details.
2. The coordinators shall jointly establish the agenda and conduct all other necessary preparations for the meetings of the Association Council and the Association Committee according to the above provisions, and shall follow-up on the decisions of such bodies, as appropriate.

ARTICLE X.4

Sub-Committees of the Trade Title of this Agreement

1. The Sub-Committees shall be composed of representatives of the European Union, on the one part, and of representatives of Chile, on the other part.
2. The Sub-Committees 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 Association Committee, at an appropriate level. Meetings shall be held alternately in Brussels or Santiago when the delegations of the Parties meet in person.. Meetings may also be held by any technological means available to the Parties.
3. The Sub-Committee shall be co-chaired by both Parties.