



# **EUROPEAN COMMISSION SERVICES' POSITION PAPER ON THE SUSTAINABILITY IMPACT ASSESSMENT IN SUPPORT OF NEGOTIATIONS FOR THE MODERNISATION OF THE TRADE PART OF THE EU – CHILE ASSOCIATION AGREEMENT**

*June 2020*

## **1. Introduction**

This paper sets out the European Commission services' position on the Sustainability Impact Assessment (SIA) on the modernisation of the Trade Part of the EU – Chile Association Agreement (the Agreement). The SIA was commissioned by the European Commission's Directorate-General for Trade and was carried out by the independent consultancy company BKP Research and Consulting, together with the Catholic University of Valparaiso (Centro Vincular). The study was completed in May 2019 and has fed and continues to feed directly into the negotiations.

The Agreement entered into force in its trade part in February 2003. Considerable trade and investment policy developments have taken place since then. The Agreement has led to a significant increase in bilateral trade in goods from €7.7 billion in 2003 to an all-time high of €18.9 billion in 2011, and a marginal decline since then to €18.3 billion in 2018.

Over time, the EU's relative weight as a trading partner has declined as the EU went from being Chile's first trading partner in 2007 to third in 2018. The EU, however, remains Chile's largest source of FDI. Moreover, both the EU and Chile have meanwhile concluded or are negotiating ambitious and comprehensive preferential trade agreements with other trading partners that go far beyond the provisions of the Agreement.

In 2013, the EU and Chile agreed to explore to comprehensively modernise the Agreement and negotiations for an ambitious, comprehensive and progressive modernised Agreement were launched on 16 November 2017.

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Date: June 2020

Trade

The areas under negotiation include: (1) further liberalisation in agriculture and food products, (2) rules of origin, customs and trade facilitation provisions, (3) non-tariff barriers for industrial and agri-food products, (4) market access for services sectors of key EU and Chile interest, (5) comprehensive investment liberalisation and protection disciplines, (6) improved public procurement rules and coverage in terms of entities, (7) improved rules on intellectual property rights, including the protection of Geographical Indications (GIs) on foodstuffs, and, (8) Trade and Sustainable Development. Last but not least, the Agreement includes provisions on anticorruption in trade and investment and, for the first time, the EU is negotiating provisions on Trade and Gender Equality in an Association Agreement, in line with the Commission's active promotion of gender equality through its trade policy.

SIAs are trade-specific assessments carried out by external consultants to support major trade negotiations. The SIA is designed to provide negotiators and policymakers with an evidence-based *ex ante* assessment of the potential sustainability impacts that may arise from a proposed trade agreement.

A SIA assesses how the trade and trade-related provisions of the agreement under negotiation could affect economic, social, human rights, and environmental issues in the EU and in the partner country, but also in other relevant countries (notably, developing countries); and proposes measures to maximise the likely benefits of the agreement or to mitigate possible negative impacts. The SIA is also an important tool for consultation and communication with stakeholders, contributing to the transparency of trade negotiations.

The impact analysis covers the full scope of negotiations on the modernisation. The starting point for the analysis were the European Commission's estimated economic effects of the modernised Agreement, based on a Computable General Equilibrium (CGE) model simulation, under two liberalisation scenarios, one "conservative" and one "ambitious". These scenarios were complemented with estimates regarding the impact of reducing barriers to flows in investments and the participation in public procurement markets of EU and Chilean firms.

The SIA qualitative analysis assumes that current published initial textual proposals tabled by the EU and Chile in the ongoing negotiations would be largely included in the final negotiated Agreement.

The analysis uses available existing research, the published initial textual proposals made by the EU and Chile and the final texts of other recently concluded FTA negotiations by the EU (in particular EU-Mexico) and Chile. However, the most relevant primary sources were possibly the information and views provided by relevant stakeholders in both Chile and the EU under the various consultation mechanisms. These consultations were comprised of five main elements. First, digital engagement through the website,

Twitter, and electronic newsletters served to keep stakeholders informed of the study progress and disseminated draft and final outputs. Second, interviews and meetings with key stakeholders, as well as three online surveys and a separate human rights survey collected the inputs and views of stakeholders. Third, three civil society dialogue (CSD) meetings were held in Brussels to consult specifically with EU stakeholders. Fourth, five workshops were held in Chile, both in Santiago and in other regions, to consult with Chilean stakeholders. Finally, meetings and exchanges with EU officials took place to discuss the research, findings and recommendations.

The final report is publicly available on DG Trade's website:

<http://ec.europa.eu/trade/policy/policy-making/analysis/sustainability-impact-assessments/assessments/>

This document constitutes the Commission services' response to this SIA's findings and recommendations.

## **2. Overview of the consultant's findings**

Overall, the SIA finds that the modernised Agreement, which builds on the original one from 2003, is likely to make a modest contribution to the existing bilateral relationship in economic terms. Therefore, given the relatively small expected incremental economic impact, it is unlikely to raise overall sustainability concerns. Nevertheless, specific effects in particular sectors, areas, or groups of people cannot be excluded. The SIA assesses these in a number of horizontal analyses (the impact on SMEs, women and rural communities), sector analyses (covering dairy, mining, construction, tourism and hospitality services, communication and business services, and wholesale and retail trade) and case studies (olive oil, salmon farming, lithium batteries value chain, renewable energy, competition, and subsidies). The findings of these analyses support the conclusion that the modernised Agreement's overall impacts on sustainability will be limited, while offering the opportunity to ensure that the benefits from liberalised bilateral trade are sustainable and widely shared.

### 2.1. Economic impacts

The economic analysis, based on the results of the CGE modelling carried out by the European Commission, concludes that the modernisation of the Agreement does not raise sustainability concerns in terms of the scale of the impacts and adjustment pressures. The impact for the EU is negligible, both at the aggregate economic level and at the sectoral level. In Chile, the impact would be more noticeable in the most affected sectors but would

similarly be of a scale that would raise minimal concerns from a sustainability perspective.

By 2025, the economic analysis foresees a **GDP increase** of EUR 165 million in the EU under the conservative scenario, and EUR 336 million under the ambitious one. For Chile, those gains are EUR 362 million and EUR 728 million respectively. This is in line with the European Commission's earlier Impact Assessment.

The economic gains are driven primarily by an **increase in EU exports to Chile**, with the major part of those gains generated by the reduction of Non Tariff Barriers (NTBs) in the goods sector. EU bilateral exports would rise by almost 10% or about EUR 1.9 billion in the conservative scenario and by about 21% or about EUR 4.2 billion in the ambitious scenario. Chile would make more modest bilateral export gains of 1.4% or about EUR 199 million in the conservative scenario and 2.3% or EUR 324 million in the ambitious scenario.

**Looking at specific sectors**, the greatest increase for EU exports are expected in the industrial products' sector, with machinery exports rising 17% in the conservative scenario, followed by an increase of 12% in the motor vehicles sector. Other sectors with potential significant increases are chemicals, rubbers and plastics, and wood and paper products. For services, the transportation sector is the one expected to benefit the most. For Chile, the greatest export increases are expected in the vegetables, fruits and nuts sector, followed by beverages and tobacco, and other food products. Chile's services sectors are also expected to modestly increase its exports.

The SIA expects the impact of the modernised Agreement on the **participation in global value chains** to be slightly positive. Furthermore, no sustainability concerns from an economic perspective have been identified regarding **intellectual property rights**, the **impact** of the Agreement **on third regions** (including LDCs and the EU's Outermost Regions) or the administration of Rules of Origin. Finally, the modernisation of the Agreement is expected to strengthen the legal framework in both the EU and Chile to combat **corruption and money laundering**, leading to beneficial economic and social effects. The modernisation could also reinforce existing domestic rules and procedures on good regulatory practices and transparency, thereby strengthening good governance in both partners.

## 2.2. Social impacts

Turning to social impacts, the SIA concludes that the modernised Agreement is expected to have **very limited social impacts** in the EU and only very small ones in Chile. Only in certain high-impact sectors can more pronounced effects be seen.

The picture is similar when analysing the **effects on employment and wages**, which are estimated to be negligible in the EU, and small in Chile. There, the modernised Agreement is expected, under the ambitious scenario, to lead to sectoral employment changes ranging from an increase of 2.2% in the vegetable oil sector to a decrease in the machinery one of about 2.9%. With regards to wages, the report foresees a limited increase in real wages in Chile: an increase of 0.5% for unskilled workers and an increase of 0.3% for skilled workers, indicating a small decrease in income inequality overall.

The report also concludes that given the very limited economic effects, the impacts on public policies and social protection, as well as on the informal economy, are expected to be very limited. However, the modernised Agreement could have a **positive impact on worker's rights and job quality** through the trade and sustainable development (TSD) chapter commitments. These relate to health and safety at work, labour inspection and decent working conditions, promotion of decent work and the effective implementation of ratified ILO conventions.

### 2.3. Impact on Human Rights

Similarly to the social impacts, the SIA concludes that **the overall effect of the modernised Agreement on human rights is expected to be minor** in both the EU and Chile, again in view of the expected limited economic impacts. However, the consultant does point to certain human rights that could be affected, even if the report specifies it would only be to a very limited extent.

Specifically, the modernised Agreement could have a very limited impact in Chile, e.g. on the right to the highest attainable standard of physical and mental health, the right to adequate food, or the right to work. However, the SIA finds that the modernised Agreement should not have an impact on the right to food. A similar conclusion is reached as regards the right to work due to the limited expected economic impact of the modernised Agreement. The SIA concludes that the modernised Agreement could impact the rights of indigenous peoples should there be an increase on mining activities, however it also concludes that given that trade is already liberalised for mining products the foreseeable effects on exports and production are negligible. Nonetheless, the report argues that the Trade and Sustainable Development provisions could lead to a positive impact on the right to work, particularly for some vulnerable population groups, such as migrant workers or women.

#### 2.4. Environmental impacts

The analysis indicates that overall **environmental impacts** will be modest.

The report finds that the overall effect of the modernised Agreement on greenhouse gas (GHG) emissions is expected to be limited. On the one hand, the CGE model simulations show an increase in emissions in the sectors in which the modernised Agreement leads to an increase in production (e.g. vegetables, fruits, nuts, oilseeds, vegetable oils and fats in Chile; motor vehicles and transport; and machinery in the EU), and similarly a reduction in the negatively affected ones. On the other hand, the consultant also notes that the modernised Agreement could have a positive effect on the development of policies aimed at addressing climate change in Chile through reemphasising the Parties' commitment to the UNFCCC and the Paris Agreement. Furthermore, the report finds that the expected reduction of trade barriers should provide greater opportunities for trade in low-carbon goods and services, as well as for strengthening the existing Chilean regulatory framework.

The consultant also finds that the modernised Agreement might lead to changes in transport emissions in Chile, both in terms of the absolute levels of transport activities and modal shift. Furthermore, it concludes that changes in bilateral trade may also increase trade-related transport emissions. However, the modernised Agreement could lead to an increase in Chile's imports of more environmentally friendly EU transport equipment, an uptake of more stringent fuel quality standards, an improvement of the transport policy framework, and an increase of European investments in Chilean transport infrastructure.

Moving on to **energy production**, according to the SIA, the modernisation would most likely expand opportunities both in Chile and the EU for the import of technical solutions that help foster renewable energy use.

The report also considered the effect of the modernisation on **air quality** and concludes that it is unlikely there will be an effect on the level of air quality in Europe, and only a minor impact in Chile.

Concerning **biodiversity**, the economic changes induced by the modernised Agreement are also unlikely to pose much of an impact. In addition, the consultant argues the modernised Agreement could provide an opportunity to address certain pre-existing issues, in particular the pressure on the biological diversity of Chile caused by land use changes, fishing, mining and urban development. In this regard, the SIA also concludes that the modernisation of the Agreement could induce an increase of **waste**, in particular as a result of increased trade liberalisation of the construction sector.

The analysis carried out by the consultant also focused on **land use** and aimed at identifying whether the expected growth in agricultural output in Chile could be achieved without expansion of agricultural area, e.g. through

increased yield. In this regard, the analysis was inconclusive. However, regarding **water quality and water resources**, the expected increase in overall agricultural activity as well as certain industrial activities such as copper mining give cause for environmental concern because of possible nitrogen run-off from farming and the discharge of contaminated water from mining activities. The consultant therefore concludes that while on average the impact of the modernised Agreement seems small, the localised impact may still be significant.

## 2.5 Horizontal issues

In addition to the specific sectoral impacts, the SIA also includes an analysis of certain crosscutting horizontal issues, such as **SMEs, gender equality and rural communities**.

The report concludes that the modernised Agreement is expected to have a slightly positive impact on SMEs due to the anticipated reduction in market access barriers, expanded access to public procurement, simplified rules of origin, streamlined customs procedures and increased innovation.

Regarding **gender equality**, the consultant assessed the effect of the modernisation of the agreement on women in their different roles in the economy and concluded that the impact on women is expected to vary, depending on the role considered. This analysis represents an element of novelty compared to previous SIAs. In absolute terms, working women are expected to benefit. However, in relative terms, sectors that employ more men are expected to grow the most (e.g. agriculture, fishing and utilities, including construction). Nonetheless, a large part of women-led enterprises operate in sectors – such as trade, hotels and restaurants and agriculture – for which the CGE model estimates a limited increase in output and in bilateral trade. Finally, the study expects the impact on women in their roles as traders, notably in Chile, to be limited but positive.

The consultant also analysed the modernised Agreement's effects on **rural communities** in Chile, and it expects those to be positive but small overall and unevenly distributed across the country, depending on which particular economic activities dominate a given region.

## 2.6 Sector Analyses

The SIA contains a more in-depth analysis of certain sectors and topics based on their economic importance, the anticipated impact of the modernised Agreement, and the level of importance accorded to them by stakeholders and negotiators. The sectors chosen are milk and dairy products, mining, construction industry, tourism and hospitality services, communications and business services, and wholesale and retail trade.

Concerning the **milk and dairy sector**, the consultant concludes that even if the modernised Agreement could increase bilateral trade significantly, with exports from the EU to Chile increasing by 40%, and exports from Chile to the EU by 76% (although from a much lower basis), the total exports and output of the sector would only change marginally due to trade diversion. Accordingly, employment and other social effects in this sector, as well as environmental and human rights effects, are expected to be negligible. The expansion of geographical indications (GIs) to dairy products is not expected to have a major impact in Chile, as Chilean dairy producers currently use mostly names not in conflict with such protection.

Turning to **mining**, the report concludes that because tariffs in this sector were fully liberalised already under the Agreement, the economic impact both with regards to changes in bilateral and total trade, as well as output of the modernised Agreement, is estimated to be negligible in both the EU and Chile. Nevertheless, the SIA argues that the modernised Agreement could contribute to addressing certain outstanding issues in the sector, such as accidents at work, especially TSD chapter provisions regarding measures and policies on health and safety, as well as labour inspections and facilitated by the exchange of best practices and cooperation.

On the **construction sector**, the consultant notes that it is likely to be impacted by the modernised Agreement's provisions on SMEs, social and labour issues provisions, and those on investment and public procurement.

With regards to the **tourism and hospitality services**, the effects on employment and wages would be negligible for the EU and marginal for Chile. The consultant concludes that the TSD Chapter could have a positive impact on working conditions of the tourism sector in Chile. Similarly, the impacts of the modernised Agreement in the **wholesale and retail trade sector** are expected to be minimal both on wages as well as on employment for Chile and negligible for the EU.

Finally, when considering **communication and business services**, the SIA concludes that bilateral trade may increase due to the modernised Agreement. Changes in total sector output are marginally positive in the EU and slightly more positive in Chile, at 0.14% and 0.26% in the conservative and ambitious scenarios respectively. Employment effects in the EU are negligible; in Chile, a small contraction of unskilled labour is estimated – 0.15% in the conservative scenario and 0.29% in the ambitious one – as well as a marginal decrease in employment of skilled labour (less than 0.1%).

## 2.7 Case Studies

The consultant also carried out six case studies, which were selected on the basis of the importance of the issues from an economic, social, human rights or environmental angle; the magnitude of the modernised

Agreement's expected economic, social, human rights and environmental impact; stakeholder views; and relevance or sensitivity of the issues from a negotiating perspective.

**Olive oil:** The consultant concludes that the modernised Agreement would have a positive effect on Chile's olive oil industry, with a production increase of 5.9%. This would in turn ensure positive social and human rights effects in Chile. Nonetheless, the magnitude of the economic effects on bilateral trade would be relatively small. However, another expected effect could therefore be increased pressure on land and water use, thereby potentially negatively affecting the right to a clean environment and the right to water.

**Salmon farming:** The SIA concludes that the impact of the modernised Agreement on salmon exports from Chile is likely to be minimal. Trade of fresh and frozen salmon is already liberalised, and even a full liberalisation of market access for smoked salmon would be unlikely to lead to a major rise in smoked salmon exports from Chile, given that the existing quota has not always been filled. Moreover, the consultant concludes that the TSD provisions could lead to regulatory changes, or changes in the implementation and enforcement of regulations, enhancing the sustainability of salmon farming in Chile.

**Lithium batteries value chain:** Chile is the EU's main supplier of lithium, which already benefits from full tariff liberalisation. The consultant concludes that the modernised Agreement could still have positive effects through the simplification of technical and trade facilitation measures in the modernised Agreement. Furthermore, the TSD and Energy and Raw Materials (ERM) provisions could help address the social, human rights and environmental impacts of lithium mining.

**Renewable energy:** The consultant concludes that the modernised Agreement has the potential to strengthen the cooperation between the EU and Chile in the area of Energy and Raw Materials. The TSD Chapter specifically can help Chile realise its renewable energy ambitions.

**Antitrust and mergers:** The report concludes that the impact of the modernised Agreement on competition issues, including on mergers and acquisitions, would be negligible for both parties.

**Subsidies and state aid:** In the absence of major anticipated economic effects of the modernisation, the consultant concludes that any potential effect of the modernised Agreement on the Parties' subsidy practices would have to come from provisions in the modernised Agreement. On the basis of the text proposal currently being negotiated, it eventually concludes that no major impact on subsidies practices is to be expected.

### **3. Commission services' views on the findings and recommendations**

The consultant lists a set of recommendations with the purpose of enhancing the positive impacts and preventing or mitigating the negative impacts identified in the SIA report. It is important to note that Commission services closely followed the SIA process and its findings, and that these recommendations fed and continue to feed directly into the ongoing negotiations. The report outlines two different types of recommendations: (a) recommendations to be considered in the process of the negotiations, and (b) flanking measures to reap the benefits or mitigate the potential adverse effects of the modernized Agreement.

The former, which will be the focus of the Commission's services response, can be grouped in four sections: (1) economic recommendations, (2) social recommendations, (3) human rights recommendations, and (4) environmental recommendations. The consultant provided extensive recommendations throughout the report, and a set of main recommendations on which this section will focus on. The flanking measures are addressed to the European Commission, to other EU institutions, to the EU Member States, to Chile and/or to civil society and other stakeholders. The Commission services acknowledge the value of the suggestions on flanking measures addressed to the EU. They could be useful as elements to be taken into account in the implementation phase of the Agreement, in particular regarding the implementation of the SME, TSD and Trade and Gender Equality provisions and/or during a possible future ex-post evaluation of the modernised Agreement.

### 3.1 Economic Issues

In this section, the primary recommendations presented in the SIA address the following economic issues: (a) trade liberalisation, (b) public procurement, (c) competition and subsidies, (d) increasing transparency, and (e) anti-corruption.

Starting with the issue of **(a) trade liberalisation**, the consultant suggests that in order to increase the social acceptability of the remaining areas, particularly of the sensitive agricultural issues:

*A gradual tariff reduction, a gradual increase of the tariff-rate quotas and/or safeguard measures to be triggered in case of a substantial import increase.*

Commission services agree with the importance of a well-managed and controlled liberalisation of the tariff lines not liberalised under the Agreement. For instance, for sensitive agricultural products, the Commission is considering a wide range of tools in the negotiation on tariff liberalisation.

In the area of **(b) public procurement**, the consultant made six specific recommendations:

1. *Strengthen the exchange of statistics and information regarding public procurement.*
2. *Incorporate enhanced cooperation on public works contracts, on self-declaration of the businesses' financial status and abilities, and on equivalence of titles of qualified suppliers.*
3. *Include specific commitments to develop, establish, and maintain the automatic system for the translation and publication of summary procurement notices in English.*
4. *Consider issues specifically relevant for SME access.*
5. *Refer to the promotion of green procurement, addressing corruption, and promoting the use of electronic procurement.*
6. *Annex to Public Procurement Chapter, Section B on Market Access Commitments should address some of the existing barriers through a wider set of companies and sectors open for public procurement.*

Commission services acknowledge the importance of comprehensive and effective public procurement provisions in the modernised Agreement. Responding to the specific points in turn, first of all, Commission services agree that the exchange of statistics is an important element for the implementation and monitoring of the Public Procurement Chapter and note that the exchange of statistical information is part of the EU's textual proposal, thus subject to negotiation between the parties. Concerning enhanced cooperation on public works contracts, the Commission will explore the possibility of extending the coverage of the modernised Agreement to public works concessions / BOT (build, operate & transfer) contracts, so that those types of contracts are subject to non-discrimination and transparency principles.

As regards the self-declaration and equivalence of titles of qualified suppliers, the principles of non-discrimination and fairness in the procurement procedure are a key part of the modernisation negotiations. Moving on to the recommendation on automatic translation of summary procurement notices, Commission services note that the key obligation in the proposed text is to publish summary notices in one of the WTO official languages, in line with the WTO Agreement on Government Procurement (GPA). As Spanish is one of the official WTO languages, there is no rationale to include specific commitments regarding automatic translation.

Concerning the question of SME access, Commission services note that both Parties acknowledge the importance to facilitate the participation of SMEs in public procurement procedures, and this is part of their discussions. For the EU, it is essential to ensure that any measure designed to facilitate the participation of SMEs in public procurement be non-discriminatory against the other Party's enterprises. The EU also strongly supports the inclusion in the Agreement of ambitious sustainable procurement, e-procurement, and

anti-corruption measures. Those are currently part of the modernisation negotiations.

The final recommendation of the consultant in the area of public procurement concerns reducing existing barriers. The Commission services agree with this recommendation, and they are seeking a wide-ranging coverage. Lastly, it should be noted that the public procurement annex does not list companies specifically but rather contracting entities.

In the area of **(c) competition and subsidies**, the SIA puts forth two specific recommendations:

- 1. Ensure explicit coverage of competition policy issues in the transparency provisions.*
- 2. Consider removing the limitations on the scope of the consultations procedure for subsidies (which exclude agricultural goods and audio-visual services) currently foreseen in the EU textual proposal.*

As regards the first recommendation, Commission services consider that transparency in competition matters is addressed in the proposals for the Transparency and Competition Chapters.

Commission services do not agree with the latter recommendation. As it is specified in the negotiation guidelines for this negotiation as approved by the Council on 8 November 2017, it is appropriate to exclude agricultural goods from the bilateral consultation procedure in the FTA negotiations with Chile. Consultations take place in the existing multilateral framework for consultation on subsidies in agriculture under the WTO Committee on Agriculture. Similarly, in line with the same negotiation guidelines, audio-visual services should also be excluded from the bilateral consultation procedure.

The consultant also presents one primary recommendation in the important area of **(d) transparency** in the modernised Agreement, namely to:

*Include similar provisions on Good Regulatory Practices and Transparency as in the EU-Mexico agreement.*

Commission services agree with this recommendation. In this regard, the Commission is negotiating a chapter on Transparency and another one on Good Regulatory Practices, which address these issues. The latter will ensure, among other things, that the regulatory processes of the Parties are transparent and that the public has opportunities to contribute at an early stage.

To conclude the economic recommendations, the SIA touches on the issue of **(e) anti-corruption**. Two are highlighted as particularly relevant:

- 1. Expand obligations on the Parties to further UNCAC provisions;*
- 2. Incorporate the provisions in the EU-Mexico agreement on whistleblower protection and transparency registers.*

Commission services acknowledge that the fight against corruption in its various forms is an overall important objective and takes note of these valid recommendations. It is however important to emphasize that these specific points were proposed by Mexico in the negotiations with the EU for the Modernised EU-Mexico Agreement. In addition, Chile has a different system in place from Mexico's in the realm of whistle-blower protection and transparency registers rendering an exact transposition of the provisions of the EU-Mexican agreement difficult. Nonetheless, these issues are currently under negotiation and Commission services are committed to ensuring an ambitious outcome in this area.

### 3.2 Social Issues

In this section, the primary recommendations presented in the SIA address the following social and human rights issues: (a) consumer protection, (b) women's rights and gender equality, (c) corporate social responsibility/responsible business conduct, (d) monitoring, institutional set-up of the Agreement, and civil society dialogue.

The first issue addressed in this section regards **(a) consumer protection**. The overarching recommendation is to:

*Include robust provisions on the right to regulate, upholding levels of consumer protection, quality and safety of traded goods and services, with appropriate implementation and enforcement mechanisms.*

Commission services agree with this recommendation, namely to maintain the right to regulate to uphold high levels of consumer protection and the safety of imported and exported goods and services. In this regard, the Good Regulatory Practices (GRP) and Digital Trade chapters that the EU has tabled aim to secure the right to regulate of the Parties and to protect consumer interests. The GRP Chapter establishes procedures to allow all interested persons, including consumer organisations, to comment on major regulatory initiatives. The Digital Trade Chapter contains specific provisions on consumer protection. Furthermore, the EU has also proposed an ambitious Technical Barriers to Trade (TBT) chapter with provisions that go beyond the existing WTO and bilateral commitments in order to improve the development of standards and technical regulations in line with international standards, with the aim of improving the quality and safety of products.

Lastly, the EU wants to include an SPS Chapter containing rules that will facilitate trade by, inter alia, increasing transparency, establishing balanced and fair conditions (import conditions and regionalisation), and fostering dialogue and cooperation with Chile, while maintaining the non-negotiability of EU SPS safety standards.

The second important recommendation brought forth by the SIA in the area of social issues relates to **(b) women's rights and gender equality**. Here, the overarching recommendation on the part of the consultant is to:

*Consider in the preamble/objectives gender equality, women's economic empowerment, support and encouragement for women to seize the opportunities offered by the modernised Agreement, and mainstream gender issues into core trade disciplines, e.g. trade in services, public procurement or investment.*

The EU proposed objective of the Trade and Gender Equality provisions is to strengthen EU and Chile's trade relations and cooperation in ways that effectively provide equal opportunities and treatment for women and men to benefit from the modernised Agreement. Regarding the suggestion to include clear and measurable targets on women's rights, the EU has already proposed to reaffirm the commitment to effectively implement the obligations under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). CEDAW provides a universal standard for women's human rights. It covers different aspects of women's social, cultural, political and economic rights. Therefore, it would not be appropriate to have an additional selection of targets for women's rights. The SIA did not identify specific challenges for women-led companies or female employees in the core trade disciplines such as trade in services, public procurement or investment. Moreover, it is difficult to design specific provisions in these areas.

With regards to the issue of **(c) corporate social responsibility and responsible business conduct**, the SIA puts forth two separate recommendations:

- 1. Include provisions related to CSR/RBC (including clauses that recognise extraterritorial application of human rights treaties) and responsible management of global supply chains, as well as cooperation in this area, into the modernised Agreement.*
- 2. Foresee cooperation and exchange of best practices among companies from both Parties, e.g. through workshops, seminars, studies and cooperation projects.*

Commission services agree with the importance of including effective provisions in this area. In fact, the EU proposal for the TSD Chapter already includes an article on trade and responsible supply chain management, which requires Parties to promote corporate social responsibility/responsible business conduct in line with relevant international instruments. This could be relevant to address potential land use changes following the expected increase, although very limited, of Chile's output of vegetables, fruits and nuts. It also includes a commitment for Parties to exchange information and best practices, as well as to cooperate bilaterally, regionally and in international fora on trade and responsible supply chain management

issues, including on the role of corporate actors to carry effective consultation with vulnerable stakeholders.

The final overarching social issue, but with a broad horizontal relevance to the entire agreement, where the consultant puts forward recommendations relates to the **(d) monitoring, institutional set-up of the agreement, and civil society dialogue**. The broad relevance of this issue-area is emphasised by the scope of the four recommendations:

- 1. It is recommended to strengthen the mechanisms to implement, monitor and enforce measures related to good governance and transparency in the Agreement.*
- 2. Ensure effective and regular monitoring by parliaments and non-state actors/civil society, including a civil society advisory group or committee for each Party (with members from its own civil society representing all pillars of sustainable development).*
- 3. Expand the mandate of civil society participation to allow for activities on its own initiative regarding the complete scope of the modernised Agreement.*
- 4. Reflect the Agreement's scope in the institutional design of the civil society participation, e.g. by allowing for sub-committees on technical matters and/or by widening the scope of civil society representatives in the monitoring bodies of the modernised Agreement.*

Commission services broadly agree with these recommendations. In this regard, the EU's textual proposal establishes a representative civil society dialogue mechanism (often known as DAG – Domestic Advisory Groups) which each side would consult on the implementation of the overall agreement and which could also be consulted in a specific configuration on the trade part of the agreement. The EU and Chile, respectively, would be able to decide how to establish this mechanism and the participation could be open to any civil society organisation. The EU's textual proposal also foresees that an open-ended Civil Society Forum would take place when the Parties meet. Representatives of the Parties will participate in this forum to present information on the implementation of the Agreement and to discuss it with any interested civil society participant.

### 3.3 Human Rights Issues

With regards to human rights, the SIA sets out five specific recommendations for the Modernised agreement that include both general and specific provisions:

- 1. Insert a horizontal human-rights clause covering the entire Agreement.*

2. *Include clear and measurable targets on women's rights into the Trade and Gender provisions.*
3. *Include wording on protection of human health in Article 2 of the EU textual proposal for an ERM Chapter to ensure that the Parties reserve their rights to adopt, maintain and enforce measures necessary to protect human health and ensure enjoyment of the right to health and right to water of the population.*
4. *Consider explicitly addressing the right of the Parties to regulate food labelling based on non-discrimination principles and in line with domestic public policy purposes in the Agreement text.*
5. *Consider including provisions on promotion of dialogue on the quality standards of food products and set ambitious goals to increase the quality of food and drink for Chilean and EU consumers.*

For the Commission, ensuring respect for human rights and democratic principles is an essential element of the negotiations. Under the modernised Agreement, the EU and Chile will step up cooperation to promote and protect human rights. In this regard, the political part already includes a General Principles article, which requires the respect of democratic principles and human rights and fundamental freedoms, as laid down in the Universal Declaration of Human Rights and other relevant international human rights instruments. The abovementioned provision is proposed as an essential element of the modernised Agreement.

Concerning the recommendation of establishing targets on women's rights, the Commission services consider that as stated in the previous section, the inclusion of clear CEDAW commitments, which cover all issue areas, is a suitable way to ensure that the modernised Agreement will support women's rights.

Regarding the ERM Chapter, Commission services agree on the fundamental importance of protecting human health, in this regard the right of the Parties to regulate in the public interest should be recognised by the modernised Agreement, not only for the ERM Chapter but across the board. In this regard, it is important to note that European standards will be protected through this Agreement and not be negatively impacted in any manner by this agreement. Commission services agree on the need to uphold the rights of indigenous peoples and their right to free, prior and informed consent to any development activities.

As regards the question of food labelling, which in the view of the consultant could affect the right of access to food, Commission services note that labelling issues will be addressed in the TBT Chapter. This chapter will incorporate the principle of the World Trade Organisation TBT Agreement that guarantees the Parties rights to fulfil their legitimate

objectives, including human health and safety, without creating unnecessary obstacles to international trade.

Finally, Commission services agree with the fifth recommendation. The EU proposal for a Chapter on Sanitary and Phytosanitary measures (SPS) includes provisions to improve the Parties' cooperation in multilateral fora, in particular in international standard setting bodies. It also establishes dialogues on animal welfare, anti-microbial resistance and food science, which can all contribute to improve food production standards in Chile and the EU.

### 3.4 Environmental Issues

Finally, the SIA sets out an important and detailed list of environmental recommendations to be included in the negotiations for the modernised Agreement. These include both general recommendations as well as suggesting specific clauses to be included in the TSD Chapter:

1. *Recognise the need to implement environmental policies and priorities in line with each Party's commitments to internationally recognised agreements and standards as included in Appendix B (Table 53).*
2. *Recognise the need to adopt or modify relevant legislation, regulation and policy instruments to support achieving these commitments.*
3. *Emphasise the need to provide a clear governance framework to support the development of such relevant legislation, regulation and policies.*
4. *Consider including provisions in which Parties agree on further details regarding the above environmental aspects.*
5. *Include clauses in the TSD Chapter that:*
  - a. *recognise the value of foreign investments in Chilean transport infrastructure and confirm the need to address barriers to such investments;*
  - b. *recognise that although trade arrangements between the EU and Chile are not expected to have a high impact on air quality at aggregate level, the local effects could still be significant and should be addressed;*
  - c. *recognise the need to reduce energy consumption and promote transfer of low-energy and low-carbon technologies;*
  - d. *recognise the need to support modal shift and enhanced transport infrastructure as well as the need to adopt or modify the necessary legislation, regulation and policy instruments to*

- support these objectives and promote capacity building in these areas;*
- e. recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems as well as of promoting responsible and sustainable aquaculture;*
  - f. agree to strengthen exchange of best practices on domestic water management strategies.*

Commission services agree with the overall need to have clear and effective commitments in the area of environmental protection and sustainable development. In fact, the EU proposal for a TSD Chapter already includes a commitment to effectively implement the multilateral environmental agreements (MEAs), protocols and amendments. Rather than setting specific environmental standards in each EU trade agreement, these support the implementation of international environmental rules, laid down mainly in multilateral environmental agreements. Some of the suggestions, like provisions on low-energy and low-carbon technologies or sustainable aquaculture are already included in the EU proposal for a TSD Chapter. Others are either not covered by specific MEAs or other international instruments (like air quality) and/or do not have a clear link to trade (like modal shift). Moreover, the Political and Cooperation part of the association agreement will contain an article on environment, mandating the Parties to cooperate specially in such matters as water and air quality, and transportation impact assessment and management, among others. Furthermore, the EU proposal for the TSD Chapter contains a cooperation article where EU and Chile may decide to work jointly on any of the trade-related aspects of environment and labour policies raised in the recommendations above.

#### **4. Conclusion**

The analysis and the conclusions of the SIA support the rationale for the modernisation of the Association Agreement with Chile, which goes beyond the merely economic considerations by also covering political and cooperation aspects. The SIA finds that the modernisation is likely to have modest but positive economic, environmental and social impacts.

While the impact will be limited overall, it is important to underline that the modernised Agreement will update an existing Agreement that already liberalised large parts of trade. It is also important to note that other benefits are not quantified or quantifiable, like the legal certainty that this modernised Agreement provides by setting up broad and comprehensive rules on trade and investment, including investment protection provisions.

In this context, it is important to note that besides updating the bilateral trade rulebook with state of the art provisions on trade and investment, the

modernised Agreement will contain a set of provisions that the current Agreement lacks. These are: a Trade and Sustainable Development Chapter, Anti-corruption provisions, a Digital Trade Chapter, and, for the first time in an EU trade agreement, Trade and Gender Equality provisions that aim at promoting equal opportunities and treatment for women and men to benefit from the modernised Agreement.

As explained in the previous section, Commission services welcome many of the recommendations of the consultants on the economic, social, human rights and environmental impacts of the modernised Agreement. The SIA process has usefully and directly fed and continues to feed into the negotiations. The different draft reports were available to the negotiating team, which had the opportunity to discuss the research, findings and recommendations of the study with the consultant and relevant stakeholders during civil society meetings as they became available. Finally, it should be noted that the negotiation texts tabled by the EU, which are all public<sup>1</sup>, also to a very large extent address these recommendations.

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<sup>1</sup> <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1793>