

REPORT ON THE 10TH ROUND OF NEGOTIATIONS BETWEEN THE EU AND CHILE FOR THE MODERNISATION OF THE TRADE PART OF THE EU CHILE ASSOCIATION AGREEMENT

The 10th round of negotiations for the modernisation of the Trade part of the Association Agreement took place from 19 April to 7 May 2021.

The Parties managed to achieve substantial progress on protection of Geographical Indications, Technical Barriers to Trade (excluding the car Annex), Rules of Origin and some progress on the Government Procurement chapter.

On Market Access, the EU and Chile had a preliminary discussion that helped clarify the mutual expectations. The Parties agreed to continue working after the round toward a new exchange of offers for goods.

During the round, the EU presented to Chile the new chapter on Sustainable Food Systems. Chile received well the EU proposal and the Parties will continue discussing the text during the month of May.

The Parties advanced also in other chapters such as Trade and Sustainable Development, Trade and Gender, Energy and Raw Materials and the Trade Defence Instrument.

The Parties also had constructive discussions on the Investment Court System and on financial services. However, there is still a considerable number of issues pending in these chapters; more work will be necessary to move towards common ground.

An official next round of negotiations has not been agreed yet but the Parties will continue to work closely together toward a mutually beneficial agreement.

The results in specific areas are as follows:

1. Trade in Goods

The EU and Chile discussed the pending articles on definitions, standstill, import and export restrictions and origin marking. The Parties also revised the EU last proposals on import and export restrictions and import licensing procedures.

Concerning the preliminary discussion on the exchange of offers, Chile shared its expectations about receiving improved access to the EU market for a group of tariff lines currently excluded or subject to TRQs. The EU took note and share its views and concerns.

2. Rules of Origin

The constructive discussion continued on Rules of Origin with a further nine articles agreed as well as most of the Introductory Notes to the product specific rules of origin. Progress was made on the main outstanding issues with the Parties moving closer to finding solutions in respect of cumulation, the product specific rule of origin for Chapter 16 and the verification procedure.

3. Technical Barriers to Trade

The EU and Chile made progress on several outstanding provisions of the TBT Chapter and most of the Chapter is now finalised. Some areas will require further discussions, in particular the motor vehicles annex.

4. 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 the scope and certain key definitions of the ICS, the interlinkages between the ICS and other international investment dispute settlement mechanisms, and the system for the recognition and enforcement of awards under the ICS. Discussions also covered the composition and functioning of the first instance and appeal tribunals as well as the costs associated to such double instance mechanism.

Chile has now acquired a sufficiently clear understanding of the design and functioning of the ICS, and is at the final stages of the related internal consultation process with stakeholders and other government branches. Further progress in the bilateral discussions is to be expected as such process finalises and Chile forms a solid position on the ICS, which allows for substantive text-based negotiations to proceed.

5. Trade in Services

The Parties had a very constructive session during which they consolidated most of the outstanding points in the common headnotes. Chile presented some changes that will be made to its offer to reflect comments received by the EU. Both Parties agreed that the stabilization of the investment chapter is necessary before any formal exchanges.

6. Financial Services

The Parties had two negotiating sessions in which they discussed all the text-based open issues and fully consolidated the provision on domestic regulation. Some progress was achieved on the provisions on committees and consultations, where both Parties need to conduct internal reflections to come to a final landing zone. Important divergences persist with regard to the inclusion of disciplines on performance requirements.

7. Intellectual Property Rights

Chile and the EU discussed the textual proposals on intellectual property rights. The discussions covered the general provisions of the Chapter as well as copyright, trademarks, designs, patents, protection of undisclosed information and border measures

The Parties discussed possible compromise texts on a number of areas and made progress on copyright, designs and trademarks.

8. Geographical Indications

Both parties made substantial progress in agreeing on the level of protection for GIs. The parties also continued discussions on administrative enforcement as well as on the conditions for co-existence between geographical indications and trademarks.

The round allowed confirming the substantial reduction of conflicts achieved during previous discussions during an inter-sessional. Discussion on the remaining ones will continue. Both parties agreed to reflect further on the remaining outstanding issues, notably regarding administrative enforcement, and to continue discussions on the remaining conflicts of protection with the aim to find tailor-made solutions.

9. 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 market access offers. On market access, the parties exchanged on Chile's updated market access offer of April 2021. Parties also discussed the scope of coverage of works' concessions.

On the text, the discussions allowed the Parties to improve their understanding of each other's position on a number of areas and to achieve further progress; additional discussions are still needed to bridge the outstanding diverging positions, while the majority of the text is agreed.

Parties agreed to continue the work intersessionally.

10. Customs and Trade Facilitation

The two pending issues that remained in the chapter relates to the use of customs brokers and to temporary admission. On customs brokers, both parties share the intention of the commitment and the EU will explore alternative language to accommodate Chile's concerns. On temporary admission, Chile is expected to propose an alternative wording.

11. State Owned Enterprises

The Parties had a constructive discussion that enabled better understanding of each other's position on the pending proposals.

Chile presented text proposals, which allowed progress on the articles on definitions and on enterprises granted special rights or privileges. The Parties agreed to consult internally on a limited number of outstanding issues.

The main pending issues concern the scope of application of the chapter and non-discriminatory treatment.

12. Competition

On competition, the Parties resumed the discussion based on the negotiated text discussing all remaining articles of the chapter. Exchange of views, questions and answers took place.

The remaining pending issues relate to technical assistance and cooperation, as well as the competition consultation mechanism.

13. Subsidies

On subsidies, the Parties resumed the discussion on the basis of the negotiated text, exchanging views in all pending issues. The EU commented the proposals presented by Chile and both Parties clarified the understanding of each Party of the pending provisions. The main pending issue relates to Chile's request to have a consultation mechanism on agricultural subsidies.

14. Trade Defence Instruments

Good progress was made, most technical issues have been solved. Certain issues in the bilateral safeguard clause, such as the length of the transition period or the duration of measures remain linked to market access and will be dealt with at a later stage.

15. Trade and Sustainable Development

The group continued constructive and in-depth discussions on the Trade and Sustainable Development chapter, where possible working on compromise texts, and otherwise further clarifying similarities and divergences.

The group agreed on articles related to objectives in the Trade and Sustainable Development common provisions and in the environment section. The group also made progress on articles related to the right to regulate and levels of protection, wild flora and fauna, as well as multilateral environmental agreements.

Further discussion is needed on articles related to scientific and technical information, transparency, multilateral environmental agreements, climate change, forestry, biodiversity, marine biological resources, institutional arrangements, as well as dispute resolution.

Together with the Trade and Gender group, the group continued to explore the possibility of applying the same institutional arrangements to TSD and Trade and Gender provisions.

16. Trade and Gender

The Parties continued constructive and in-depth discussions on the Trade and Gender chapter. The Parties made good progress in agreeing on most of the paragraphs related to context and objectives, multilateral agreements, general provisions and cooperation activities.

Further discussion is needed on articles related to cooperation activities as well as institutional arrangements and dispute resolution.

Together with the Trade and Sustainable Development group, the Parties further explored the possibility of applying the same institutional arrangements to Trade and Sustainable Development and Trade and Gender provisions.

17. Good Regulatory Practices

The Parties made good progress in the Chapter and finalised most of the text. More discussions will be needed regarding retrospective evaluations.

18. Energy and Raw Materials

The Parties had three half-day sessions on the Energy and Raw Materials chapter, which resulted in incremental progress on all aspects of the text on the table. Chile, however, maintains strong reservations to parts of the EU's proposals relating to undistorted trade and investment in raw materials.

19. Sanitary and Phytosanitary Standards

On the pending aspects, while positions remain different, the presentation of the Sustainable Food System chapter seems to have stimulated the discussion in the SPS chapter. The Parties discussed the articles on animal welfare and anti-microbial resistance. Chile tabled counterproposals for the articles on cooperation in multilateral fora and on food safety

science. The EU will carefully assess the alternative texts. Divergences persist on the issue of the frequency of physical control checks.

20. Sustainable Food Systems

The EU presented the new chapter on Sustainable Food Systems to Chile and the Parties had a preliminary exchange. Chile received well the proposal; in particular, it appreciated the cooperation nature of the chapter. The Parties discussed also the institutional setting on which Chile will present a counterproposal.

21. Horizontal Provisions

The parties reviewed the objectives and definitions and cleaned up several comments of past rounds. They also reaffirmed their intention to accommodating the wording and specific details to the outcome of the negotiations and the corresponding legal scrub.

22. General Exception

The parties cleaned up several comments of the past rounds. They also shared their views on EU's proposal towards Multilateral Environmental Agreements and to resume the discussions on this matter in light of the outcome of the TSD Chapter.