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ANNEX 1

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ANNEX

to the

Joint Recommendation for a Council Decision

**Authorising the European Commission and the High Representative of the Union for
Foreign Affairs and Security Policy to open negotiations and negotiate with Chile a
modernised Association Agreement**

{SWD(2017) 172 final} - {SWD(2017) 173 final}

ANNEX

**DIRECTIVES FOR THE NEGOTIATION OF A MODERNISED ASSOCIATION
AGREEMENT WITH CHILE**

A. NATURE AND SCOPE OF THE AGREEMENT

The aim of the negotiation is to conclude a comprehensive agreement with Chile (Modernised Agreement) to modernise and replace the existing Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part¹ (Association Agreement).

The negotiations should broaden the current scope of the Association Agreement and adjust it to the new political and economic global challenges, to the new reality of the EU-Chile partnership, and to the level of ambition of recently concluded agreements and negotiations being conducted by the EU and Chile.

The Modernised Agreement should create a coherent, comprehensive, up-to-date legally binding framework for the EU's relations with Chile.

Given that Chile has graduated from bilateral EU development assistance, it is important that the new pattern of EU-Chile cooperation is reflected in the substance and structure of the Modernised Agreement. It should reflect the transformative nature of the 2030 Agenda and the role of international development cooperation towards the achievement of the Sustainable Development Goals.

The Agreement should provide for strengthened political cooperation on foreign and security matters.

The precise structure of the Agreement will be determined in the light of a further assessment of Opinion 2/15 of the Court of Justice.

B. PROPOSED CONTENT OF THE AGREEMENT

I. GENERAL PRINCIPLES AND OBJECTIVES

¹ OJ L352 of 30/12/2002, p.1

The Modernised Agreement should be based on respect for democratic principles, the rule of law, human rights and fundamental freedoms, as enshrined in particular in the UN Charter and other relevant human rights instruments, among them the Universal Declaration on Human Rights. Together with the first part of the EU clause on non-proliferation of weapons of mass destruction, these should constitute essential elements of the Modernised Agreement. It should provide for the possibility of unilateral partial or full suspension of the Agreement in the event of infringement of these principles.

The Modernised Agreement should allow Chile and the EU to strengthen their institutional capabilities, public policies and legislative frameworks, as well as acting as strategic partners in key multilateral and regional fora and institutions, when they so agree.

The Modernised Agreement should require each Party to take all necessary measures in order to give effect to its provisions, including their observance at all levels of government.

The Modernised Agreement should reflect the common cultural heritage and the strong historical, political and economic ties which unite the two sides and be in conformity with the following underlying principles and key objectives:

- To adapt the contents of the Association Agreement to better reflect recent global developments.
- To reflect the shared values of democracy, respect for human rights and fundamental freedoms, and the rule of law.
- To reflect the commitment to foster a stronger Association with the purpose of bringing prosperity and well-being to their citizens.
- To reinforce closer coordination on bilateral and international issues of mutual interest, including regional aspects.
- To strengthen cooperation on bilateral, regional and global issues of common concern.
- To reflect the importance of a strong and effective multilateral system, based upon international law, by preserving peace, preventing conflicts and strengthening international security and in tackling common challenges.
- To reflect the recognition that sustainable development is an overarching objective of the Parties and that they will aim at ensuring the respect, promotion and effective implementation of international environmental and labour agreements and standards consistent with the EU acquis. It should also reflect the commitment of the Parties not to encourage trade or foreign direct investment by lowering domestic environmental, labour or occupational health and safety legislation and standards, core labour standards or policies and legislation, as well as the commitment to improve laws, policies and underlying levels of environmental and labour protection.

The objective of the trade and investment provisions of the Agreement should be to increase trade and investment between the EU and Chile by realising the untapped potential of the bilateral relationship, generating new economic opportunities, enhancing consumer welfare, strengthening competitiveness and creating jobs and growth, inter alia through:

- The progressive and reciprocal further liberalisation of trade in goods and services, investment as well as access to public procurement opportunities.
- A high level of protection of investment.
- A high level of protection of intellectual property rights, including Geographical Indications.
- A high level of protection of consumers.
- The elimination, reduction or prevention of unnecessary non-tariff barriers.
- The right to regulate economic activity in the public interest, to achieve legitimate public policy objectives such as the protection and promotion of public health, social services, public education, safety, the environment, public morals, social or consumer protection, privacy and data protection and the promotion and protection of cultural diversity.
- Measures to ensure that international trade contributes to the overarching objective of sustainable development, and the Parties' commitment to implement this Agreement accordingly.
- The shared objective of the Parties to take into account the particular challenges faced by small and medium-sized enterprises in contributing to the development of trade and investment.
- The commitment of the Parties to communicate with all relevant stakeholders from civil society, including the private sector, trade unions, and other non-governmental organisations.
- The commitment of the Parties to an Agreement in full compliance with their rights and obligations arising out of the WTO and supportive of the multilateral trading system.

II. AREAS FOR COOPERATION

The Agreement should advocate the widest possible scope for cooperation from which no field of activity should in principle be excluded. It should build on the experience from the existing cooperation and aim at ensuring effective international cooperation in the implementation of the 2030 Agenda and the achievement of Sustainable Development Goals.

It should include commitments from both parties to deepen their cooperation through exchanges of knowledge and best practices in areas of common interest, also taking into account that Chile is a high income country and OECD member. It should reflect the importance of strengthening sectoral cooperation activities, which should notably be aimed at developing concrete proposals and measures and strategic objectives and fostering a dynamic culture of consultation and coordination.

It should allow the parties to identify ways of developing and applying modern, effective, and dynamic working methods and allow a joint assessment of results, based on strategic objectives. It should foster the creation of contact networks and strengthen the necessary capacities to plan, implement, measure, evaluate, and disseminate the results of the relationship.

Areas for cooperation:

- Common Foreign and Security Policy
- Disarmament and non-proliferation
- Human rights, rule of law and good governance
- Gender equality
- International security and cyberspace
- Fight against terrorism
- Judicial cooperation
- Combating illicit drug trafficking, organized crime and corruption
- International migration
- Consular protection
- Citizen security
- Cooperation in international crisis management
- Enterprise and industry
- Raw materials
- Corporate social responsibility

- Employment and social issues
- Regional cooperation
- Youth
- Culture
- Sustainable energy
- Environment
- Climate change
- Circular economy
- Fisheries
- Ocean governance
- Disaster preparedness
- International cooperation and development
- Blue growth
- Research, science, technology and innovation
- Earth observation
- Digital policy strategies
- Advanced human capital
- Education and higher education
- Tourism
- Protection of personal data
- Statistics
- Other areas, as appropriate

III. TRADE AND INVESTMENT

NATURE AND SCOPE

The objective of the trade and investment part of a modernised Agreement should be to increase the level of ambition in all areas of the existing Agreement. It should provide additional and comprehensive reciprocal liberalisation of trade in goods and services, and the establishment of detailed rules on a broad number of trade and investment-related issues, as specified below. The Agreement should also provide for progressive and reciprocal liberalization of investment, investment protection, and additional mutual access to public procurement markets. Furthermore, the Agreement should aim at removing unnecessary obstacles to trade and investment, including existing non-tariff barriers (NTBs), through effective and efficient mechanisms, and seek an ambitious level of regulatory coherence for goods and services, including through enhanced cooperation between regulators.

The rules of the Agreement on regulatory coherence, in particular, should be without prejudice to the right of the Parties to regulate in accordance with the level of health, safety, consumer, labour, data and environmental protection that each side deems appropriate, or otherwise to achieve legitimate public policy objectives, such as cultural diversity or sustainable development objectives (as defined by each Party) through regulation.

The trade and investment part of the Agreement should also contribute to the promotion of sustainable development and broader EU values such as human rights, inter alia by including trade-related provisions on labour, environment and gender, including through corporate social responsibility, transparency and the promotion and effective implementation of international labour and environmental standards. To address such measures, sustainable development should be taken into account throughout the Agreement, including in the form of a specific chapter on trade and sustainable development, covering both social and environmental issues.

The Agreement should ensure that all levels of government, including sub-central authorities and relevant entities, effectively comply with the provisions of the Agreement.

The Agreement should take account of the particular needs of small and medium-sized enterprises.

TRADE IN GOODS

Further elimination of customs duties

The Agreement should aim at full tariff liberalisation, while providing for special treatment for products identified as sensitive, for which meaningful market access should be sought through, for instance, longer dismantling periods, or partial liberalisation commitments (including tariff rate quotas), taking into account EU offensive and defensive interests.

Any customs duties, taxes or charges on exports or any measures of equivalent effect should be abolished, and the adoption of new measures of this kind should be prohibited.

Import and export restrictions

The Agreement should prohibit any ban or restriction on trade between the Parties, including quantitative restrictions or authorisations requirements, which are not justified by the specific exceptions set out below, and should contain enhanced disciplines on import and export licensing, repaired goods, remanufactured goods and origin marking.

Rules of origin

Negotiations should aim at updating the Annex on Rules of Origin, so as to make the rules of origin and administrative cooperation in the Agreement clearer and simpler, and take into account the latest developments in EU rules of origin. Provisions on administrative cooperation should also aim to ensure that administrative errors are dealt with appropriately.

In the interest of EU trade and investment, extension of cumulation of origin to third countries could be considered in the course of the negotiations.

Customs-related matters and Trade Facilitation

The Agreement should include provisions to further facilitate trade between the Parties, while ensuring effective controls and anti-fraud measures. To this end, it should build on the WTO Trade Facilitation Agreement and include detailed obligations aimed at, inter alia, promoting the modernisation and simplification of rules and procedures, standardised documentation, transparency, legal certainty and cooperation between customs authorities.

Such cooperation should include exchanging information for supply-chain security and risk management and, where appropriate, establishing mutual recognition of risk management techniques, risk standards, security controls, and trade partnership programmes for compliant and trustworthy economic operators, to be decided and implemented by the relevant Committee. It should also include upgrading the current provisions on mutual administrative assistance in customs matters.

These provisions should also promote convergence in the trade facilitation field, through the effective implementation and application of international rules and standards in the field of customs and other trade-related procedures, including WTO provisions and World Customs Organisation instruments and, inter alia, the revised Kyoto Convention.

Non-tariff measures

The Agreement should aim at removing unnecessary obstacles to trade and investment, including remaining NTBs, through effective and efficient mechanisms, and promoting regulatory coherence for goods and services between the EU and Chile.

Product-specific NTBs should be addressed on a request and offer basis, in parallel with exchanges on tariff concessions. The Agreement should include sector-specific commitments on NTBs. The Agreement should also envisage appropriate procedures to prevent new NTBs and other unnecessary obstacles to trade from arising in the future, including through transparency in applicable laws and regulations.

The Agreement should include provisions on State Trading Enterprises, assessing any possible distortion to competition and barriers to trade and investment that this could create.

The issue of localisation barriers to trade (measures designed to protect, favour or stimulate domestic operators at the expense of imported goods, services or foreign-owned or foreign-developed intellectual property) should also be addressed.

Technical regulations, standards and conformity assessment procedures

The Parties should conclude comprehensive provisions on Technical Barriers to Trade (TBT), building on and going beyond the WTO Agreement on Technical Barriers to Trade (TBT Agreement). These provisions should aim at, inter alia, seeking compatibility and convergence of technical regulations through the application of international standards, streamlining testing and certification requirements, e.g. through a risk-based approach to conformity assessment (including the use of self-declaration of conformity in sectors where this is possible and appropriate), promoting the use of accreditation, strengthening transparency, establishing a mechanism for improved dialogue and cooperation for addressing bilateral TBT issues, and improving dissemination of information to importers and exporters.

Sectoral Annexes with more detailed and specific disciplines could be considered.

Sanitary and Phytosanitary measures (SPS)

In order to ensure coherence with other similar trade agreements concluded by the EU, the new Agreement should incorporate, with appropriate institutional arrangements, the provisions of the current SPS Agreement annexed to the existing Association Agreement, considering possible adjustments in specific areas if needed.

Trade defence instruments

Safeguards

The Agreement should include a clause on safeguard measures providing that any of the Parties may take appropriate measures in accordance with the WTO Agreement on Implementation of Article XIX of the General Agreement on Tariffs and Trade (GATT) 1994 or the WTO Agreement on Safeguards. The Agreement should also ensure that such safeguard measures have the least distorting effect on bilateral trade.

To maximize liberalisation commitments, and in order to ensure any necessary protection, taking into account specificities of sensitive sectors, the Agreement should in principle contain a bilateral safeguard clause by which either party may remove, in part or in full, preferences where, as a result of the entering into force of the Agreement, a rise in imports of a product from the other party is causing or threatening to cause serious injury to its domestic industry.

Anti-dumping and countervailing measures

The Agreement should include a clause on anti-dumping and countervailing measures providing that any of the Parties may take appropriate measures against dumping and/or countervailable subsidies in accordance with the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 or the WTO Agreement on Subsidies and Countervailing Measures. The Agreement should also integrate

commitments that go beyond WTO rules, in this area in line with EU rules and previous agreements.

Specific provisions

The Agreement should recognise that green box payments are not price distortive and should therefore in principle not be targeted by anti-dumping or anti-subsidy measures.

TRADE IN SERVICES AND INVESTMENT

Services and investment liberalisation and digital trade

In line with Article V of the General Agreement on Trade in Services (GATS), the Agreement should have a substantial sectoral coverage and should cover all modes of supply. The Agreement should have no a priori exclusion from its scope other than the exclusion of audio-visual services from services and investment liberalisation commitments, and services supplied and activities performed in the exercise of governmental authority. The negotiations should aim at the progressive and reciprocal liberalisation of trade in services and investment by eliminating restrictions to market access and national treatment, beyond the Parties' WTO commitments and offers submitted in the context of the negotiations of the Trade in Services Agreement. The Agreement should include rules concerning performance requirements related to investments.

Furthermore, the Agreement should contain new or enhanced regulatory disciplines as compared to the GATS. To this end, the negotiations should cover matters such as:

- regulatory provisions on transparency and mutual recognition;
- horizontal provisions on domestic regulation, such as those ensuring impartiality and due process with regard to licensing and qualification requirements and procedures; and
- regulatory provisions for specific sectors – including telecommunication services, financial services, postal and courier services and international maritime transport services.

In the context of the increasing digitalisation of trade, the negotiations should result in rules covering e-commerce and cross-border data flows, electronic trust and authentication services, unsolicited direct marketing communications, and should address digital protectionism and unjustified data localisation requirements, while neither negotiating nor affecting the EU personal data protection rules.

The Agreement may include procedural commitments for the entry and stay of natural persons for business purposes pursuant to the Parties' commitments in Mode 4. At the same time, nothing in the Agreement should prevent the Parties from applying their national laws, regulations and requirements regarding entry and stay, provided that, in doing so, they do not nullify or impair the benefits accruing from the Agreement. The EU and its Member States' laws, regulations and requirements regarding working conditions and labour rights shall continue to apply.

The Agreement should reaffirm the right of the EU, its Member States and their national, regional and local authorities to regulate within their territories to achieve legitimate public

policy objectives such as the protection and promotion of public health, social services, public education, safety, the environment, public morals, social or consumer protection, privacy and data protection and the promotion and protection of cultural diversity. The high quality of the EU public services should be preserved in accordance with the TFEU and in particular Protocol No 26 on Services of General Interest, and taking into account the EU's reservations in this area, including GATS.

Investment protection

The Agreement should include:

- state-of-the-art, precisely defined protection standards, including provisions on fair and equitable treatment, full protection and security, national treatment, most-favoured nation treatment, protection against direct and indirect expropriation, free transfers, compensation for losses, observance of written commitments; and
- a state-of-the-art jurisdictional mechanism to resolve disputes between investors and states, with an investment tribunal and appellate mechanism (Investment Court System). This mechanism should ensure full impartiality and transparency of dispute resolution procedures, prevent frivolous litigation and include appropriate tools to facilitate the amicable settlement of claims.

The provisions on investment protection should ensure a strong protection of investors and investments, while fully preserving the Parties' right to regulate within their territories to achieve legitimate policy objectives such as the protection and promotion of public health, social services, public education, safety, the environment, public morals, social or consumer protection, privacy and data protection and the promotion and protection of cultural diversity.

CAPITAL MOVEMENT AND PAYMENTS

The Agreement should maintain provisions on the full liberalisation of current payments and capital movements, and include a standstill clause. It should contain safeguard and carve-out provisions (e.g. concerning the Union's economic and monetary policy and balance of payments), which would be in accordance with TFEU provisions on the free movement of capital.

The Agreement should not preclude the enforcement of exceptions on the free movement of capital and payments justifiable under the relevant WTO rules.

INTELLECTUAL PROPERTY RIGHTS

The Agreement should complement and build upon the TRIPS Agreement, aiming to ensure a high level of protection and enforcement of all forms of intellectual property rights.

Consistent with the above, the Agreement should cover general provisions; copyright and related rights; trademarks; designs; patents; plant varieties; protection of undisclosed information including trade secrets; geographical indications (GIs); and commitments, where applicable, to adhere and/or comply with relevant multilateral agreements and conventions.

The Agreement should ensure enhanced enforcement of IPR, including in the digital environment and at the border.

As regards Geographical indications (GIs), building on the high level of protection for wines and spirits GIs already contained in the existing Agreement, the Modernised Agreement should provide direct protection through the agreement of listed agricultural products/foodstuffs GIs, at a high level of protection building upon TRIPS Art 23 (including against evocation), enhanced enforcement, exceptions to the rights conferred to trademarks (co-existence), and the possibility to add new GIs. Issues concerning individual prior rights, for example related to plant varieties, trademarks, generic or other legitimate prior uses, should be addressed.

The Agreement should also aim at setting up a regular dialogue/working groups on Intellectual Property to promote exchange of information on respective legislative progress, exchange of experience on enforcement and consultation in relation to third countries.

PUBLIC PROCUREMENT

The Agreement should aim at enhanced mutual access to public procurement markets by central and sub-central authorities, as well as by state owned enterprises and undertakings with special or exclusive rights operating in the public utilities sectors. It should aim at complementing the current market access coverage ensuring treatment no less favourable than that accorded to locally-established suppliers. Procurement of goods, services and construction services should be covered with limited exceptions and should also include negotiations of commitments in relation to works concessions, in line with the respective legislations in this area.

The Agreement should also aim at improving the current rules and disciplines by aligning them to the revised WTO Government Procurement Agreement (GPA) and by introducing new provisions.

TRADE AND COMPETITION

The Agreement should contain disciplines on antitrust and mergers applicable to all enterprises. It should include general enforcement principles, including transparency, non-discrimination, procedural fairness and due process.

The Agreement should also contain provisions on subsidies covering issues such as transparency, consultations and disciplines concerning the most distortive types of subsidies. Provisions on consultations should exclude agricultural subsidies. The Agreement should include specific rules on state owned enterprises, enterprises granted special rights or privileges and designated monopolies, to ensure that they do not distort competition or create barriers to trade and investment.

SMALL AND MEDIUM-SIZED ENTERPRISES

The Agreement should include a specific SME chapter. The Agreement should assist SMEs to be fully able to take advantage of the opportunities of the Agreement, including through information-sharing arrangements on market access requirements, and an appropriate institutional set-up.

TRADE AND SUSTAINABLE DEVELOPMENT

The Agreement should include provisions on labour and environmental aspects of trade and sustainable development of relevance in a trade and investment context. It should include provisions that promote adherence to and effective implementation of relevant internationally agreed principles and rules, including the core labour standards and fundamental conventions of the International Labour Organisation (ILO) and multilateral environmental agreements, including those related to climate change.

The Agreement should reaffirm the right of the Parties to regulate in the labour and environmental areas, consistent with their international commitments, and in pursuit of high levels of protection. It should include provisions for domestic labour and environmental levels of protection not to be lowered in order to encourage trade and investment. This should include a commitment not to derogate from or fail to enforce domestic labour or environmental laws.

The Agreement should promote a greater contribution of trade and investment to sustainable development, including by addressing areas such as the facilitation of trade in environmental and climate-friendly goods and services and the promotion of voluntary sustainability assurance schemes, corporate social responsibility and gender equality, having regard to internationally recognised instruments.

The Agreement should also contain commitments promoting trade in legally obtained and sustainably managed natural resources, in particular in relation to biodiversity, wildlife, forestry products, fisheries and cover relevant international instruments and practices. It should also promote trade favouring low-emission, climate-resilient development.

The Agreement should foresee suitable provisions for the effective implementation and monitoring of these provisions, as well as procedures to address any disputes arising between the Parties, and should provide for civil society participation.

TRADE AND GENDER

The Agreement should include provisions addressing trade-related aspects of gender. It should recognize the need to enhance opportunities for women to benefit from the economic opportunities arising from the Parties' enhanced trade relationship through the Agreement.

ENERGY AND RAW MATERIALS

The Agreement should include provisions addressing trade and investment related aspects of energy and raw materials. Negotiations should aim at ensuring an open, transparent, non-discriminatory and predictable business environment and at limiting anti-competitive practices and tackling local content requirements in these areas. The Agreement should also include rules that support and further promote trade and investment in the renewable energy sector.

REGULATORY COHERENCE AND TRANSPARENCY

The Agreement should include cross-cutting disciplines on regulatory coherence and transparency for the development and implementation of efficient, cost-effective, and more compatible regulations for goods and services. The Agreement should include, inter alia, provisions on early consultations on significant regulations, including opportunities of stakeholders to contribute to the preparation of regulatory proposals, publication of measures having an impact on trade and investment, promotion of information exchange, and the enhanced use of good regulatory practices, such as regulatory impact assessment and ex-post evaluation.

ANTI-CORRUPTION

The Agreement should include specific provisions targeting and discouraging corruption affecting trade and investment. Such provisions should be based on European and agreed international standards and agreements relating to anti-corruption.

STATE-TO-STATE DISPUTE SETTLEMENT AND MEDIATION

The Agreement should include an effective and binding state-to-state dispute settlement mechanism with an expedited procedure, in particular for the panel composition and the conduct of panel proceedings. The dispute settlement mechanism should be transparent, open and innovative. It should include provisions for a flexible and rapid mediation mechanism.

GENERAL EXCEPTIONS

The Agreement should include general exceptions, including regarding security, balance of payments, prudential supervision and taxation based on the relevant Articles of WTO Agreements.

OTHER AREAS

Following analysis by the Commission, prior consultation with the Trade Policy Committee, and in accordance with EU Treaties, the Agreement may include provisions regarding other areas related to trade and investment for which mutual interest would be expressed in the course of negotiations.

IV. GENERAL INSTITUTIONAL FRAMEWORK

The Agreement should include provisions on the institutional structure, building on and further developing existing arrangements and practice.

The Association Council should keep its role of the highest body of the Modernised Agreement responsible for the general supervision of its implementation. It is suggested to adapt the periodicity of the Council meetings based on common agreement by the parties.

The Association Committee should keep its key role in ensuring the implementation of the Agreement. The Agreement should identify ways to make the work of the Association Committee more effective, to promote synergies and provide more dynamism, in its task to assist the Association Council in the performance of its duties. Subcommittees and working groups may be set up to deal with specific issues.

The Agreement should provide for specific Trade meetings of the Association Committee established under the Agreement (“Trade Association Committee”) to monitor the implementation of the trade and investment provisions of the Agreement. Sub-committees on specific areas may be established as appropriate, and would operate under the framework of the Trade Association Committee. The Trade Association Committee should report to the Association Council.

The Association Parliamentary Committee should keep its role and constitute a forum of inter-parliamentary cooperation for members of the European Parliament and of the Chilean National Congress.

The Joint Consultative Committee should be maintained to represent the opinion of civil society and social partners in the implementation of the new agreement.

V. GENERAL AND FINAL PROVISIONS

Notwithstanding the Dispute Settlement Mechanism for trade and trade-related issues, the Agreement should include provisions on the non-fulfilment of obligations of the Agreement, including the possibility of partially or fully suspending the Agreement in the event of violation of the essential elements. Nothing in this Agreement should affect EU legislation regarding public access to official documents.