

EU-Chile Advanced Framework Agreement

Summary of the Trade and Investment pillar

Brussels, 9 December 2022

This document summarises the negotiating results of the modernisation of the EU-Chile Association Agreement at the time of the agreement in principle on 9 December 2022 . As the agreement in principle does not correspond to the end of the negotiating process, the description of the results achieved should not be considered as final. Some chapters still need some fine-tuning, while for some others some issues are still open and remain to be settled before the actual finalisation of the negotiations. Any agreement referred to in this text is to be considered ad referendum and should not be taken as being in all cases the definitive position of the EU or Chile.

This is not a legal text.

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Trade

1. Trade in goods

The original agreement did not contain a number of provisions for rules for trade in goods that have by now become standard in trade agreements. It also left out of liberalisation a number of tariff lines in agriculture and fisheries.

Apart from the elimination of most of the remaining customs duties, the text contains provisions on fees and formalities, import and export licensing; it bans export duties, and contains new generation provisions on remanufacturing, goods entered after repair as well as a clause on specific measures in the case of fraud where FTA preferences are temporarily suspended. A firm standstill clause guarantees that the parties will not be able to increase duties towards each other, except for the exceptions contemplated in the Trade Remedies chapter.

Market Access

All industrial goods and a number of fish and agricultural goods which have already been liberalised under the current Association Agreement will continue to receive duty free treatment.

The new agreement will liberalise 96% of the tariff lines not yet liberalised on Chile's side and 66% on the EU side, over a maximum of 7 years. This means that over 95% of trade between the EU and Chile will be duty free. Among others, Chile will liberalise EU dairy products and food preparations. The existing tariff rate quotas for EU cheese and for Chilean processed cereals, sugar confectionery, chocolate, sweet biscuits and prepared mushrooms will remain temporarily in place, but will be ultimately liberalised under the new agreement, at the latest seven years after entry into force of the modernised agreement.

Exclusions are kept to the minimum referring only to very sensitive products, namely for sugar on both sides, and for bananas and rice on the EU side. The preferential treatment currently applicable to the Chilean fruit and vegetables which are subject to the EU entry price system will remain unchanged.

For the remaining products, the EU will provide additional market access only in the form of duty-free quotas. For meat quotas, the unlimited annual growth factors that currently apply to those tariff rate quotas will be eliminated at entry into force, while the EU will increase the existing quotas by 18 000 t for poultry meat (phased-in in two equal shifts, one at entry into force and one after 3 years), 9 000 t for pork, 4 000 t for sheep meat and 2 000 t for beef. These tariff quotas regroup all tariff lines which were under discussion for those specific sectors. For garlic, the existing quota will be increased to a total amount of 2 000 t and the annual growth factor will also be eliminated. The existing tariff rate quota for canned fish will be replaced by a duty-free quota of 250 tonnes. The EU will open new duty-free quotas for fruit preparations (10 000 t), olive oil (11 000 t), apple juice (2 000 t), eggs (500 t, shell egg equivalent), starch and starch derivatives (300 t), sugar-rich products (1 000 t), sweet corn (800 t), ethanol (2 000 t) and rum (500 hl).

Industrial goods

Under the existing agreement, there is already full liberalisation in all sectors, including chemicals, plastics, cosmetics and textile and clothing, where the EU is very competitive.

2. Rules of Origin

The rules of origin have been modernised in accordance with the latest standards taking into account the use of global value chains and reducing the administrative burden of origin procedures by moving to self-certification.

General provisions

The general provisions have been simplified and streamlined while also adding important trade facilitative provisions. Accounting segregation for fungible materials is now allowed, helping businesses to make efficient use of their warehouse space by storing originating and non-originating materials together, while averaging is now explicitly allowed to simplify the calculation of the value of non-originating materials. Moreover, the non-alteration rule allows for important logistical operations to take place in third country hubs during the shipment. There is no prohibition on the use of duty drawback when producing originating products. Bilateral cumulation of materials originating in the other Party is available, and in addition it is possible to use cumulation for tuna originating in the Andean Community used in the production of canned tuna.

Origin Procedures

The section on origin procedures has been modernised and is similar to the procedures found in the most recent EU trade agreements with the UK and Japan.

The claim for preferential tariff treatment will be based either on a statement on origin by the exporter or through the knowledge of the importer that the products are originating. The statement on origin can cover a single consignment of originating products or be valid for consignments during a period of up to 12 months. Statements of origin made out by EU exporters will require a REX number.

The claim for preference should be made at the time of import but retrospective claims for preferential tariff treatment is allowed meaning refunds of duty is also possible.

The verification procedure allows local customs in the country of import to ask the importer for the statement on origin and a limited set of information on the origin criteria of the products. Customs in the importing country also has the possibility through administrative cooperation to ask customs in the exporting country to verify the origin of the products through checks on the exporter. Where the importer, based on his knowledge, claims preference the verification will be done directly with local customs in the country of import.

The ultimate decision on the origin of the products will be taken by the competent authorities in the country of import.

Product Specific Rules

The product specific rules have been updated to the latest standard allowing for appropriate integration in global value chains while ensuring that there has been significant production taking place in the EU or Chile. This is in line with the rules agreed in the EU-Japan EPA, the EU-UK TCA and the revised Pan-Euro-Med rules which will simplify compliance by EU businesses.

3. Customs and Trade Facilitation

EU and Chile are signatory parties of the Agreement on Trade Facilitation (TFA) within the framework of the World Trade Organization.

While the EU-Chile Agreement currently in force contains provisions on customs cooperation and Customs and related matters, the new agreement contains an ambitious Chapter on Customs and Trade Facilitation. It has been developed based on the provisions of the WTO Trade Facilitation Agreement, going even further in several areas. This Chapter aims to boost EU-Chile trade by agreeing on enhanced rules of good governance for customs procedures: streamlining procedures, making them more efficient, and thereby saving time, money and red tape for all companies. It sets common principles and provides for enhanced cooperation and exchange of information between the customs authorities of the EU and Chile with a view to facilitate, where possible, import, export and transit requirements and procedures. Substantial provisions on transparency ensure that the traders and public has access to relevant information on customs legislation, decisions or administrative policies and that for new customs-related initiatives the business community has an opportunity to comment before their adoption. The EU and Chile undertake to apply simplified, modern and where possible automated procedures for the efficient and expedited release of goods, resorting where appropriate to risk management, streamlined requirements on data and documentation, release of goods and pre-arrival processing. The EU and Chile will issue, upon request, binding preliminary information to traders on the tariff classification of goods and origin (advance rulings), which will provide them with legal certainty and stability in the customs treatment of their international trade. In addition, the EU and Chile will provide for an impartial and transparent system for addressing complaints by operators about customs rulings and decisions. With a view to expediting procedures, they will adopt and maintain risk management systems for high-risk goods and post-clearance audits to ensure compliance with customs and other related laws or regulations. The EU and Chile will cooperate in establishing the mutual recognition of their Authorised Economic Operators programmes, provided that the programmes include equivalent trade facilitation measures. Furthermore, EU and Chile agreed on enhanced provisions regarding other areas such as penalties, transit, limits to fees and formalities, customs brokers and pre-shipment inspections.

The agreement also contains a Protocol on Mutual Administrative Assistance in customs matters, with enhanced measures to ensure the correct application of customs legislation.

4. Trade Remedies

As compared to the existing Agreement, the Trade Remedies chapter brings clarity and legal certainty to the economic operators by making a clear distinction between the different instruments and clarifying the conditions for their application. The chapter contains three sections. Two are related to the use of the existing WTO instruments (anti-dumping/anti-

subsidy and global safeguards), and one relates to bilateral safeguards. While the aim of a free trade agreement is to open markets, the WTO trade defence instruments should remain at the disposal of economic operators, in order to address problems caused by either unfair practices such as dumping and subsidization, or by a sudden increase of imports. In addition to the confirmation of the parties' rights and obligations under the WTO agreements, some additional elements have been included, such as increased transparency and additional consultations. The text also includes provisions allowing for the possibility to introduce a lower level of duties if this is sufficient to remove the injury caused by dumped imports (the so called lesser duty rule) and a public interest test by which the interests also of users and consumers are taken into account before any imposition of measures.

The objective of the bilateral safeguard clause is to remedy any economic damage caused by an unexpected and significant increase of preferential imports. This clause is limited in time (in general 7 years) and allows for the suspension of preferences during a period of up to 2 years, with a possible extension of two years. While the clause is sufficient to give relief to an industry if the conditions are met, it is also designed in a way that it cannot be abused to remove preferences without due justification.

5. Sanitary and phytosanitary matters

The SPS Chapter is an updated version of the current SPS Agreement in force since 2002. It takes into consideration the good results obtained by the implementation of the EU-Chile SPS Agreement in the last 19 years. It includes some new provisions to accommodate decisions or procedures adopted by the SPS Committee of the Agreement in force and modifications required by the evolution of the situation. In addition, as a new Chapter on Sustainable Food Systems has been included in the agreement, the existing provisions on animal welfare have been moved to this new Chapter.

The main changes compared to the existing Agreement are:

- Scope: Extended to include all products subject to SPS measures;
- Definitions: To replace the current list of definitions by a reference to the international standards. The definition of protected zone, not defined in the international standards, is maintained.
- Extension of the pre-listing procedure to all the establishments producing products of animal origin covered by the agreement.
- Simplification of approval procedure to include the "market access procedure for the export of live animals and products of animal origin to Chile" that was agreed with Chile in January 2014. This procedure takes full consideration of the fact that the EU is a single entity.
- Additional provision establishing working cooperation in multilateral fora, to incorporate into the agreement the working practice, on this matter, agreed by the SPS Committee.
- Additional provision to cooperate on food safety, animal health and plant protection science, to incorporate in the agreement the existing working cooperation between the respective relevant bodies.

- The list in Appendix II.A "*animal and fish diseases subject to notification, for which the status of the parties is recognised and for which regional decisions may be taken*" has been simplified by replacing the list of diseases with a reference to the OIE list of diseases.
- The frequency of physical checks in Appendix VII has been reviewed to aligned the frequency applied in the EU with that applied in Chile.

Considering all these modifications, the SPS Chapter of the modernised EU-Chile Agreement continues to be the most ambitious and comprehensive of the SPS Agreements.

In terms of the Objectives pursued by the agreement, the protection of health is the first one (Article 1).

Article 2 reaffirms our rights and obligations under the SPS Agreement and therefore our right to establish the EU appropriate level of protection.

Art 6 recognises that the EU is a single entity. Art 8 implements the concept an EU single entity by establishing a simplified authorization procedure for imports of EU products into Chile. This is an important clause aiming to avoid unfair competition between MS. It provides that the import requirements shall be the same for the entire territory of the exporting Party as long as the sanitary and phytosanitary status is the same.

The following trade facilitation measures are included:

- 1) a procedure with clear deadlines for the approval of exporting establishments (pre-listing),
- 2) a procedure to simplify import checks when possible,
- 3) procedures for certification and verification.

On health status and regionalization (Art 6) the chapter has not changed in relation to the current Agreement and continues to include the mutual recognition of the respective status for OIE diseases and includes a procedure with clear deadlines to establish the status and regionalization for diseases other than those of the OIE list.

The EU policy on “Protected zones” is included in the Chapter.

On information exchange, the chapter continues to include two different procedures. One in Article 12 that provides for information exchanges between the Parties on the respective SPS systems, in particular import conditions and authorization procedures, including the list of pests. The second one in Article 13, which provides for rapid notifications in case of serious or significant risk.

The precautionary principle is indirectly included by the ratification of the SPS Agreement in Article 2 and directly in Article 14.2: The importing Party may, on serious public, animal or plant health grounds, take provisional transitional measures necessary for the protection of public, animal or plant health.

The Chapter includes two additional provisions aiming to ensure the respective level of protection. One, Article 14 relates to the adoption of a safeguard clause in case of serious risk where measures could be adopted without previous notification. Yet, the Party adopting the measure shall inform the other Party in less than 48h. The other one, Article 10, establishes

the procedure for the verification of the official control system that is in line with international recommendation and, therefore, very similar to the EU procedure, including the payment of the expenses by the auditor Party.

Finally, there are several provisions aiming to establish a close cooperation between the Parties:

- Cooperation in multilateral fora. The aim is to ensure that the bilateral cooperation established by an agreement could be extended to the relationships of each of the Parties in the multilateral arena (“Good friends in the bilateral should also be good friends in the multilateral”).
- Scientific matters related to food safety, animal and plant health. This provision follows the cooperation between EFSA and the Chilean agency ACHIPIA.

None of these provisions on cooperation will affect the Parties’ right to regulate.

6. Sustainable Food Systems

This Chapter is in line with the Farm to Fork Strategy and the Commission Communication on Trade Policy Review. It aims to establish close cooperation with Chile to engage in the transition towards sustainable food systems. It is closely linked with the Sanitary and Phytosanitary (SPS), Technical Barriers to Trade (TBT) and Trade and Sustainable Developments Chapters.

This Chapter includes provisions for cooperation on specific aspects of sustainable food systems, such as the sustainability of the food chain and reduction of food loss and waste, the fight against food fraud along the food chain, animal welfare, fight against antimicrobial resistance and the reduction of the use and risk of fertilizers as well as the reduction of the use of chemical pesticides for which a risk assessments have shown that they imply unacceptable risk effects for health or the environment.

It is important to note that, among the cooperation activities to fight against the antimicrobial resistance, the EU and Chile have agreed to phase out the use of antibiotics as growth promoters.

The Chapter will be governed by the SPS Subcommittee that will become the SFS Subcommittee when dealing with matters covered by this Chapter. It will be composed by representatives of the EU and Chile with responsibilities for sustainable food systems.

The subcommittee will agree every year on the actions to put in place to pursue the objectives of this Chapter.

Under this Chapter, the EU and Chile have also agreed to cooperate in multilateral fora.

Finally, the EU and Chile have agreed that the provisions of this Chapter will not affect the Parties’ right to regulate.

7. Energy and Raw Materials

The Energy and Raw Materials (“ERM”) Chapter helps to ensure undistorted trade and investment and a supportive regulatory framework in the areas of ERM. It also sets the basis for further cooperation between the Parties in these areas. In this regard, the Chapter

complements the provisions of *other chapters* relevant to ERM (e.g. on goods, services, investment, technical barriers, state own enterprises, and procurement), which apply in parallel to the ERM Chapter also to these sectors.

Given the importance of Chile as a raw materials producer, a main objective of the ERM Chapter is to ensure sustainable and undistorted trade and investments in this sector, for example by prohibiting export and import monopolies or dual pricing for ERMs. It grants Chile the policy space to facilitate the emergence of new industrial sectors through setting a domestic price, provided the measure does not distort trade in primary materials and provided the price is regularly aligned to international market prices in order to avoid distortion of trade and competition in downstream sectors. The ERM chapter also ensures transparent and non-discriminatory licensing / authorisation procedures for exploration and production of ERMs.

To ensure that the bilateral trading relationship is environmentally sustainable, the Chapter includes a joint commitment to carry out environmental impact assessments for any ERM project that may have important impacts on e.g. health, biodiversity, land, soil, air or water and ensures the public is informed and given the opportunity to participate in the process. Thereby, core principles of the AARHUS and ESPOO conventions are incorporated into the text.

With regard to energy, the Chapter also includes a series of provisions that aim to facilitate the energy transition both in Chile and the EU, improving the conditions for investment notably in the area of renewable energy – for example ensuring fair, transparent and non-discriminatory access to energy transport networks for energy goods, enabling rules for renewable electricity investments, and independent regulation of the electricity system to ensure impartiality and stable investment conditions. The Chapter also aims to facilitate trade and investment in renewable fuels, in particular renewable hydrogen, also with a view to exports to the EU.

The ERM Chapter demonstrates the joint commitment to advance cooperation in the area of ERM, focusing on issues such as the energy transition, renewable energy, energy efficiency, avoidance of any technical barriers to trade, responsible mining, standards, and research and innovation in green energy and sustainable raw materials.

Both Parties fully retain full sovereignty on whether to allow the exploitation of their natural resources. The Chapter also allows for special regulation of small and isolated electricity systems provided that it does not constitute disguised restrictions to trade or investment between the Parties.

8. Technical Barriers to Trade

To increase regulatory convergence between Chile and the EU based on international standardisation, both sides agreed on a closed list of international standardisation organisations and reiterated their commitment to base their technical regulations and conformity assessment procedures on relevant international standards developed by these organisations. The Chapter highlights the importance of impact assessments in the

preparation of technical regulations and conformity assessments. It promotes a risk-based approach to conformity assessment, including consideration of supplier's declaration of conformity, and the use of accreditation to qualify conformity assessment bodies, including the mechanisms of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF). While the EU widely uses the supplier's declaration of conformity as the most trade facilitating modality of conformity assessment, Chile committed to provide for an efficient and transparent procedure for acceptance of certificates and test reports issued by the EU conformity assessment bodies for, among others, electric and electronic products. In addition to general provisions on regulatory cooperation that will enable Chile and the EU to cooperate on future regulatory issues of mutual interest, the Chapter also establishes a specific cooperation on market surveillance and product safety that provides for an exchange of information on non-compliant or dangerous products on the respective markets. On transparency, the Parties build on the WTO TBT Agreement and commit to the decisions and recommendations of the WTO TBT Committee: such as extended time for comments on TBT notifications or minimum adaptation time prior to entry into force of technical regulations or conformity assessment procedures. The Chapter also contains marking and labelling provisions that will facilitate labelling for economic operators while respecting the health and safety requirements of the Parties. Finally, the information exchange and technical discussions provisions will help to address trade irritants in a timely manner and the EU and Chile will regularly discuss the implementation of the Chapter in a Sub-committee on Technical Barriers to Trade.

Chile and EU agreed on the annex on motor vehicles, which facilitates the approval of new motor vehicles and acceptance of type-approval certificates. The Parties should permit the importation and marketing of products incorporating a new not yet regulated technology or feature, unless they have a reasonable doubt about their safety.

9. Investment¹

The agreement contains provisions liberalising investment in the form of the establishment of an enterprise between the EU and Chile in a comprehensive manner, covering both services and non-services sectors (such as manufacturing and primary industries), as well as provisions protecting all investment and investors of the EU and Chile respectively..

Investment liberalisation

The Investment Chapter will allow both Parties' investors to establish and operate their companies, in each other's territories. In particular, investors and their investments will be able to benefit from the commitment to provide non-discriminatory treatment in comparison to domestic or 3rd country investors, as well as from the ambitious disciplines for non-

¹ The investment protection provisions and Investment Court System will only be part of the "Global Agreement", and will come into force after the ratification procedure requisite for mixed competence agreements.

discriminatory market access barriers, in the form of non-discriminatory quantitative restrictions such as monopolies and exclusive rights, quotas, and economic needs tests.

Performance requirements, such as requirements to achieve a certain level of local content or to transfer technology, as a condition attached to the establishment or operation of any enterprise, will be prohibited while taking due account of Parties' sensitivities, thus enhancing the existing disciplines under the WTO TRIMS agreement.

The substantive disciplines on investment agreed with Chile follow the same approach as the most ambitious EU trade agreements concluded so far. In particular, all substantive disciplines under this Chapter will apply identically to both services and non-services sectors.

One specific feature of the Investment Chapter negotiated with Chile is that it provides for national treatment of locally established enterprises with respect to purchase of goods and services through public procurement, a commitment which is normally found in the Public Procurement Chapter in other EU agreements.

The Parties' liberalisation commitments are subject to narrowly defined scope exclusions (such as for the audiovisual sector), and specific reservations that either bind Parties' respective levels of openness, or define the desired future policy space for sectors considered particularly sensitive. The reservations are scheduled through a 'hybrid list' approach, i.e. a 'positive list' for market access obligations (based on a list of specific sectors which are committed), and a 'negative list' (all sectors committed with the exception of specific reservations for certain sectors) for all other substantive obligations. The Parties' specific commitments reflect a high level of liberalisation, corresponding to their most ambitious agreements concluded so far, including comprehensive market access commitments for non-service sectors).

Investment protection

The provisions of the Investment Chapter provide also legal basis for protection of investors and their investment in the respective territories of the EU and Chile. They will replace old-style BITs concluded by Chile with 16 Member States, and hence modernise the protection framework between the two Parties, securing in particular the proper balance between protection of investment and governments' right to regulate in public interest.

The substantive obligations included in the provisions on investment protection closely follow the EU reformed approach on investment protection. In particular, those provisions reaffirm Parties' right to regulate and confirm that regulatory framework applicable to investment may change, including in a manner that negatively affects investment. The investment protection provisions are based on clear and precise standards, which provide basic guarantees that governments will respect certain fundamental principles of treatment that a foreign investor may rely upon when making a decision to invest in the EU and Chile respectively. Those guarantees in addition to non-discrimination include protection against expropriation without compensation, commitments regarding fair and equitable treatment and physical security, freedom of transfers. Importantly, the respective provisions on investment

protection define precisely, when governments could be considered in breach of the fair and equitable treatment obligation, and remove any scope for discretionary interpretation in case of disputes.

The respective protection standards are subject to specific exceptions and reservations, which preserve additional policy space where necessary (e.g. prudential carve-out, security and general exceptions etc.). Through a Joint Statement, the Parties confirm their understanding that the investment protection provisions shall be interpreted and applied taking due consideration of their commitments under the Paris Agreement and their respective climate objectives.

Dispute Settlement (Investment Court System)

The EU-Chile modernised agreement fully implements the EU's reformed approach to investment dispute resolution by creating a permanent, independent and impartial tribunal to decide on disputes between a foreign investor and the host State of their investment. The modernisation establishes a standing international Investment Court System composed of a Tribunal of First Instance and an Appeal Tribunal composed of permanent adjudicators and subject to strict ethical requirements.

Disputes about investment protection provisions introduced with the modernisation (such as protection against expropriation without compensation, non-discrimination or fair and equitable treatment) are to be submitted to a standing international and fully independent and impartial tribunal. The adjudicators of the Tribunal of First Instance and Appeal Tribunal, which are to be appointed in advance by the EU and Chile among highly qualified experts on international law (also with the objective of gender balance in mind), will be subject to strict ethical requirements of integrity and independence. Decisions of the Tribunal of First Instance can be appealed to a permanent Appeal Tribunal which will ensure legal correctness and bring legal certainty about the interpretation of the provisions on investment protection.

Proceedings before the Investment Court System will be fully transparent and allow for the participation of interested third parties. Moreover, while the investment dispute resolution mechanism ensures that the rights of European and Chilean investors will be respected, it also safeguards the EU and Chile against potential abuses of the system, notably through the prohibition of multiple claims, enhanced disclosure requirements and the possibility of early dismissal of unfounded claims as well as the application of the 'loser-pays principle' to the allocation of procedural costs.

10. Capital movements, payments and transfers

The provisions liberalising trade in goods, services and investment are complemented by commitments ensuring freedom of payments, transfers and capital movements between the EU and Chile that are required for the purpose of transactions liberalised under the agreement. As per the EU standard practice, they are subject to standard safeguards and exceptions: in case of difficulties for the operation of economic and monetary union, and in case of balance of payments and external financial difficulties, under the same conditions as those allowed by the WTO and EU Treaties.

11. Services

In 2019, the EU exported 4.4€ billion in services to Chile. The agreement will make it easier for EU firms to provide services on the Chilean market by providing comprehensive commitments which ensure that EU service suppliers are not discriminated against in comparison to domestic suppliers or suppliers of third countries, as well as enhancing transparency and ensuring that licensing and authorisations are granted through a clear, equitable, timely and open process.

Delivery services (postal and courier)

The agreement includes provisions on universal service obligations, licenses and the independence of the regulators and will ensure equal opportunities for EU suppliers of postal and courier services and their Chilean counterparts.

Telecommunications

The agreement includes provisions focused on ensuring access to telecommunications services on an equitable basis for all service providers, by establishing a level playing field for telecommunications services providers through disciplines dealing with the regulation of the sector (such as licensing, management of scarce resources or universal service obligations) as well as disciplines precluding anti-competitive practices. The agreement also includes a set of consumer-oriented provisions, such as those pertaining to number portability, mobile roaming or confidentiality of communications.

International maritime transport services

The agreement contains obligations to maintain open and non-discriminatory access to international maritime services (transport and related services), as well as access to ports and port services.

Financial services

The agreement contains strong commitments enforcing non-discriminatory access to the Chilean market for financial services based on commonly agreed definitions and exceptions applicable to this sector. Specific disciplines on new financial services, self-regulatory organisations, payment and clearing systems, and transparency will ensure that Chilean and EU financial service suppliers can compete effectively on an equitable basis. The majority of these provisions are based on rules developed under the World Trade Organisation. It should be noted that the basic fundamental obligations such as non-discrimination, the elimination of quantitative restrictions, performance requirements, etc. that apply to other services are all replicated in the financial services chapter and provide the same result.

Temporary movement of natural persons for business purposes

The agreement includes advanced provisions facilitating the temporary movement of people for business purposes (otherwise known as "mode 4"). They cover all traditional categories such as intra-corporate transferees, business visitors for investment purposes, contractual service suppliers, and independent professionals, as well as newer categories such as installers and maintainers. The EU and Chile have also agreed to allow spouses and children

to accompany certain types of service suppliers. This will, in turn, support investment in both directions.

The agreement contains a number of provisions that apply horizontally to all trade in services and investment, such as a provision reaffirming the Parties' right to regulate. It guarantees the right of EU Member States' authorities to maintain public services, and it will not force governments to privatise or deregulate any public service at national or local level. Similarly, Member States' authorities retain the right to renationalise privately provided services so that they may return to the control of the public sector. Europeans and Chileans will continue to be able to decide for themselves how they want critical public services such as healthcare, education and water to be delivered, for example.

12. Digital Trade

The Digital Trade Title of the agreement sets out horizontal rules that apply to trade in goods and services enabled by electronic means. These provisions have three main objectives: to remove unjustified barriers to digital trade; to increase legal certainty for businesses; and to ensure a secure online environment for consumers.

The provisions that remove unjustified barriers to digital trade are the rules on facilitating data flows and prohibiting data localisation requirements, which are in line with the EU's general FTA practice; the prohibition of imposing customs duties on electronic transmissions; the rules disciplining the transfer of and access to source code by governments in order to avoid abuse, and the ban on prior authorisation procedures that specifically target online services.

The validity of e-contracts, electronic authentication and electronic trust services is ensured through additional commitments that will provide greater legal certainty for businesses engaged in digital trade.

There are also obligations in the agreement that guarantee the strong protection of consumers in an online environment, as well as restricting unsolicited commercial communications (spam). All such rules and obligations are subject to an exception for privacy and personal data protection, in line with the EU's approach.

Finally, the agreement contains a provision on regulatory cooperation on matters relevant for digital trade.

13. PublicProcurement

Through the public procurement (PP) chapter, a Party commits that its procurement entities will provide non-discriminatory treatment to economic operators, goods and services of the other Party on the basis of substantive rules applying the principles of non-discrimination and transparency, as laid down in the PP text. The PP text of rules applies to the procurement that a party accepts to be covered in its market access commitments (the "market access offer"), e.g. procurement by committed entities for committed goods and services/works and above specified thresholds.

As a result of the modernisation of the agreement, Chile and the EU will open up new public procurement opportunities for their companies on the basis of a highly modernised PP text.

Chile's market access offer is ambitious and improved compared to the already very good market access offer in the current Agreement. Chile will open up procurement for goods, services, works and works concessions contracts, at lowered thresholds compared to the current Agreement. Chile will offer comprehensive coverage of procurement for goods, services and works by its central and sub-central level and will confirm the coverage of procurement by utilities' operators in the ports and airports' fields (as in the current Agreement).

Main improvements to be highlighted are the following.

Chile will lower its thresholds for central entities (from 130 000 Special Drawing rights (SDRs) to 95 000 SDRs) and for its covered utilities operators in the ports and airports fields (from 400,000 SDRs to 220.000 SDRs). The lowering of thresholds represents a concrete market access opening and is unprecedented as unilateral.

Chile will offer non-discriminatory access for EU companies to "works concessions" contracts, namely the contracts that are subject to the public works concession regulation in Chile at central and sub-central level. Most importantly, those contracts will have to comply with the main rules of the PP text, including the obligation to public notices on a single portal and the obligation to conduct electronic procurement.

At central level, Chile will offer a new entity not belonging to the government, the Comptroller General and clarify coverage for subordinated entities agencies, including entities such as INAPI.

As to **EU market access offer**, the EU will offer reciprocal access to Chilean suppliers, goods and services to the European public procurement market at central and sub-central level. Compared to the current Agreement, the EU will offer additional market access services, similar as in the most recent EU trade agreements. In the utilities' sectors, procurement by utilities operators in the fields of ports and airports is confirmed. As to works concessions, EU will offer reciprocal access to works concessions contracts procured by central and sub-central entities, and committed to apply the main rules of the PP text to those contracts.

As to PP text, Chile accepted to ensure a high level of predictability and transparency of the public procurement processes covered by the agreement by committing to apply a highly modernised PP text. This is based on the internationally agreed standards of the WTO revised "Government Procurement Agreement" and contains additional rules, in line with most recent EU trade agreements. They concern, for example: the publication of notices through a single point of access, the use of electronic means throughout the whole procurement process, the possibility of using environmental and social considerations throughout the procurement. National treatment for locally established suppliers has been agreed too.

A very significant additional discipline concerns the single electronic portal. Chile agreed that all its notices be directly accessible by electronic means, free of charge, through a single point of access on the internet. Chile has been granted a transitional period of 3 years from the date of entry into force of the agreement, to comply with this obligation. Until the single point of access is fully operational, Chile committed to establish a gateway site, as a temporary alternative to a single point of access, free of charge, which will provide links to the four identified Chilean websites/platforms on which the notices are published. These

provisions will make information about opportunities in the Chilean market more easily accessible for European companies thus creating new opportunities for European business including SMEs.

A new element in the agreement is also the possibility for contracting authorities to take into account environmental and social considerations throughout the procurement procedure, provided they are non-discriminatory, they are consistent with the prohibition of offsets and they are linked to what is being bought.

Finally, Chile and EU committed, through specific language in the investment chapter, to ensure national treatment for locally established suppliers with regard to access to procurement procedures, which goes beyond the standard national treatment obligation. Under the PP chapter, EU companies will be able to participate on an equal footing with Chilean companies in bids for procurement covered by it and vice versa. In addition, Chile committed (and EU vice-versa) that it will also ensure non-discrimination of EU companies established in Chile (and EU vice-versa) for any purchase of goods or services by a procuring entity. This provision applies independently of covered procurement, and also for small-value procurement, i.e. below the thresholds of the agreement.

In 2020, purchases by public entities in Chile on the government procurement platform "*Mercado publico*" amounted to some EUR 10.7 billion, which represented 4,86% of the GDP of Chile and 17% of the government budget in 2020. This figure does not include State owned enterprises' purchases nor works concessions.

14. Competition, Subsidies and State Owned Enterprises

Both anticompetitive conducts and distortive subsidies can constitute an important behind-the-border trade barrier. Rules on competition and subsidies ensure appropriate conditions that will enable market access to become effective and translate into real business opportunities. The competition and subsidies chapters help ensuring a level playing field for European companies, and avoids trade benefits stemming from the FTA being eliminated by anti-competitive practices and distortive subsidies.

Competition (Anti-trust and mergers)

The EU and Chile have agreed on a chapter competition, which ensures that the competition rules applicable in Chile effectively address anticompetitive practices such as abuse of a dominant position, agreements between enterprises that restrict competition or the scrutiny of the competitive effects of a merger.

At the same time, Chilean and European companies are ensured that their rights in competition procedures will be respected (procedural fairness), and that they can confidently turn to the respective competition authorities to enforce competition law. Finally, the competition chapter also confirms the importance of cooperation between the competition authorities. It also provides for a consultation procedure that would allow the Parties to exchange non-confidential information on competition related matters.

Subsidies

The chapter on subsidies as agreed between the EU and Chile acknowledges that certain kinds of subsidies to companies that provide goods and/or services can hinder competition and trade. Therefore, the subsidy chapter includes rules to limit the potential negative effects

of the subsidies, while at the same time recognizing that subsidies may be necessary to achieve a public policy objective.

State Owned Enterprises

The text sets out rules aimed at ensuring a level playing field between private and public enterprises in their commercial activities.

It establishes binding rules to ensure non-discriminatory treatment when they engage in commercial activities. In practice decisions taken by SOEs must be commercially motivated and not discriminate the other Party's goods, services and enterprises when purchasing or selling.

Rules on transparency allow either party to request further information on particular enterprises and their activities on a case by case basis. The scope of the activities covers the largest SOEs, enterprises granted special rights or privileges and designated monopolies at all levels of government.

The agreement fully protects both Chile's and the EU's right to provide public services as they best consider fit to their citizens. It does not in any way require or lead to the privatization of any public enterprises. In this respect, both parties are free to organize their economies in this area as they consider most appropriate.

15. Intellectual property rights

The agreement includes a comprehensive chapter covering the main categories of intellectual property rights (IPR), including geographical indications. It ensures higher standards of protection and enforcement of IPRs than those provided for in the TRIPS Agreement.

The provisions on copyright and related rights cover all the categories of right holders protected by EU law and mirror the high EU standard as regards the term of protection. In particular, these provisions will bring improvements for EU right holders in Chile with respect to the resale right, the remuneration rights of performers and phonogram producers and the protection of technological protection measures, in line with EU standards. Chile acceded to the Protocol related to the Madrid Agreement in July 2022 and, pursuant to the trademarks provisions, commits to follow certain EU standards on revocation of trademarks and bad faith applications. On designs, Chile increases the term of protection from 10 to at least 15 years.

The IPR chapter integrates the most significant parts of the EU rules on the scope of protection of trade secrets and the applicable procedural rules. It also provides rules on compensation for delays in the marketing authorisation process of pharmaceutical products as well as on protection of data submitted to obtain a marketing authorisation for pharmaceutical or agrochemical products.

The IPR chapter also includes a detailed section on civil and administrative enforcement, which provides rules on e.g. the availability of provisional and precautionary measures, remedies, injunctions and damages. A dedicated text on border enforcement provides specific rules on IPR infringements with respect to all goods under customs control.

The IPR chapter goes well beyond the existing Agreement with Chile, which refers to existing international obligations under IPR treaties in force for both Parties. Therefore, the benefit of the IPR chapter for IPR-intensive industries and IPR owners, both in the EU and in Chile, is significant.

Geographical indications

The agreement will protect 216 names of EU GIs for foodstuffs in Chile as well as 18 GIs for foodstuff from Chile in the EU. This on the top of the existing Agreement on wines and spirits, which protects 1745 GI for wines and 257 GIs for spirits and 5 aromatised wines from the EU in Chile. Those GIs lists have also been updated in a parallel process.

The provisions of the new section protect GIs for foodstuff from unfair competition of products not respecting the technical specifications of the protected GIs likely to mislead the consumer of its true origin and characteristics, including against products, which are accompanied by terms such as ‘kind’, ‘type’, ‘style’, ‘imitation’, or ‘flavour’. The agreement allows adding new GIs under the protection of the agreement in the future and provides for administrative enforcement in addition to the existing avenues of judicial redress in the respective domestic systems of Chile and the EU.

16. Trade and Sustainable Development

Through dedicated provisions in the Trade and Sustainable Development (TSD) Chapter, the EU and Chile set out binding commitments, common aspirations and objectives to build a free and fair trading relationship, by marrying the values of sustainable development with the economic engine of trade.

Upholding the multilateral system

The EU-Chile TSD Chapter contains a set of binding commitments on labour rights as well as environmental and climate protection, based on the multilateral system of the International Labour Organisation (ILO) and Multilateral Environmental Agreements (MEAs). These commitments include obligations to effectively implement the internationally recognised core labour standards, as defined in the fundamental ILO Conventions, and the ILO Conventions ratified by Chile and the Member States of the European Union, respectively. The core ILO standards cover subjects such as freedom of association and effective recognition of the right to collective bargaining, elimination of all forms of forced and compulsory labour, abolition of child labour, as well as elimination of discrimination in respect of employment and occupation. These are complemented by a resolve to promote the ILO Decent Work agenda, including on occupational health and safety, working conditions, and labour inspection. The commitments also include obligations to effectively implement the MEAs and protocols to which the EU and Chile are parties, respectively. This comprises the UNFCCC and the Paris Agreement adopted thereunder, including its commitments with regard to its Nationally Determined Contribution.

In a non-regression clause, EU and Chile commit not to weaken or reduce the levels of protection afforded in their respective domestic environmental and labour laws nor to waive or otherwise derogate from such laws in order to encourage trade or investment.

The TSD Chapter includes further provisions on the fight against climate change and the transition to a sustainable low-carbon economy. It also identifies potential areas where trade and environmental agendas can reinforce each other such as: the conservation and sustainable management of biological resources, forests and fisheries; the promotion of trade in legally harvested and sustainable products; or the promotion of low-carbon technologies and energy efficiency. Key relevant international instruments include the Convention on International

Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Biological Diversity (CBD) and fisheries instruments at global (FAO) and regional level (RFMOs).

Transparency

Transparency is of particular relevance in the context of TSD. In line with the civil society mechanism established under the EU-Chile agreement, and its rules on transparency and good regulatory practices, non-state actors (employers' and workers' organisations, business organisations, environmental interest groups or academics) can be informed about and provide inputs on the development, introduction, and application of measures related to trade and labour or the environment.

Working together

The TSD provisions also establish priority areas for sharing of information and joint initiatives, including cooperation in international fora responsible for social or environmental aspects of trade such as the WTO, ILO, UN Environment and MEAs.

Furthermore, in view of the increasing importance attached to the issue, the TSD Chapter includes obligations to promote the uptake of responsible business conduct, corporate social responsibility and due diligence practices, in accordance with internationally agreed UN and OECD principles and guidelines.

Overseeing mechanism

The TSD enforcement mechanism is geared towards creating ownership, when needed with the necessary pressure elements. This implies regular dialogues, involvement of civil society and close cooperation between the Parties as a mean of reaching common positions on any matter related to the TSD Chapter.

Solution of controversies

Disagreements or controversies on any matters arising under the TSD Chapter are solved by using the governmental bodies (Trade and Sustainable Development Sub-Committee or Association Committee), government-to-government consultations and a mechanism for impartial assessment of serious issues through an independent Panel of Experts and the publication of a public report with recommendations. The report can serve as a catalyst for further dialogue between the Parties and for civil society to take up through their dialogue with the Parties.

Implementation and Review

At the time of their agreement in principle, the EU and Chile issued a joint statement, in which they reiterated key commitments of the TSD chapter, including with regard to the involvement of civil society, and expressed their joint intent to initiate a review of the chapter upon entry into force of the Agreement, in order to consider the incorporation, as appropriate, of additional provisions that may be deemed relevant by either Party at that time. In that review, the EU will be guided by the Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled “The power of trade partnerships: together for green and

just economic growth” (COM(2022) 409 final), in particular with regard to further enhancing the enforcement mechanism.

17. Trade and Gender Equality

The modernised EU-Chile agreement is the first trade agreement concluded by the EU to include a dedicated Chapter on Trade and Gender Equality. This Chapter incorporates a gender perspective into the promotion of inclusive economic growth.

In this Chapter, the EU and Chile reaffirm their commitment to effectively implement their obligations under the Convention on the Elimination of all Forms of Discrimination Against Women as well as under other multilateral agreements addressing gender equality or women’s rights.

In a non-regression clause, EU and Chile commit not to weaken or reduce the levels of protection granted under their respective laws aimed at ensuring gender equality or equal opportunities for women and men, nor to waive or otherwise derogate from such laws, in order to encourage trade or investment.

The Trade and Gender Equality provisions also establish priority areas for sharing of information and joint initiatives, including cooperation in international fora.

The Sub-Committee on Trade and Sustainable Development is the body responsible for the implementation of the Trade and Gender Equality Chapter. Disagreements or controversies on any matters arising under this Chapter are solved by using the dispute resolution mechanism established under the TSD Chapter.

18. Transparency

This Chapter includes ambitious provisions on the publication, administration, and review and appeal of measures of general application related to trade matters. The Parties have committed that laws, regulations, procedures, administrative rulings of general application and judicial decisions will be published via an officially designated medium and will provide an explanation of the objective of, and rationale for, the measure. The measure shall be administered in an objective, impartial, and reasonable manner and adequate non-discriminatory procedures of review and appeal shall exist to challenge those measures.

19. Good Regulatory Practice

The objective of this Chapter is to establish a set of Good Regulatory Practices that the Parties will use when developing regulations, while preserving a full regulatory autonomy. Chile and the EU agreed that the public should be aware in advance of the major regulatory activities that regulators are planning to undertake. Furthermore, there are provisions that ensure that opportunities will be available for the public to contribute to the regulatory process at an early stage. It specifies that these opportunities are available to any person on a non-discriminatory basis. Stakeholders should be given sufficient information about the regulatory initiative in order for them to be able to ascertain if and how their interests could be affected by the planned regulations. There are provisions regarding the use of Regulatory Impact Assessments for the development of regulatory initiatives, where the Parties commit, according to their rules and procedures, to consider the need of the regulatory act, to examine

all possible regulatory alternatives and to assess potential impacts of future regulations before issuing them. Chile and the EU recognise the positive contribution of periodic retrospective evaluations of regulatory measures in effect to reducing unnecessary regulatory burdens. The Parties also commit to establish internal coordination procedures to facilitate the development of regulations and to maintain an online regulations repository. This Chapter is not subject to dispute settlement.

20. Small and Medium Enterprises

The vast majority of companies in both the EU and Chile are Small and Medium-sized Enterprises (SMEs). Their business activities are diverse, as are their needs in various trade areas. At the same time, SMEs have fewer resources than large companies to overcome the challenges of trading internationally such as import and licensing requirements.

This agreement with Chile includes a dedicated SME chapter, in line with the 2015 EU trade strategy "Trade for all", specifically addressing the SMEs' needs. The provisions require that Chile provides a specific web site containing information that EU SMEs need to access the Chilean market, and vice versa. SME Contact Points on each side will work together to ensure that SME interests and perspectives are reflected in the implementation of the agreement.

EU SMEs will gain significantly from many of the more general provisions of the FTA. These provisions make doing business easier with Chilean partners when they export or import goods and services, invest or work together. Measures such as tariff elimination, simplified customs procedures and more compatible technical requirements are lowering export related costs per sold unit and allow SMEs with lower trade volumes to compete alongside larger companies on the Chilean market. This also enhances SMEs' ability to participate in supply chains, e-commerce, and public procurement and to provide Services.

21. State-to-State Dispute Settlement

The State-to-State Dispute Settlement ('SSDS') Chapter sets out the procedures for solving any potential dispute between Chile and the European Union on the interpretation and application of the trade and investment provisions of the agreement.

The mechanism is triggered when one Party considers that the other Party has failed to comply with the obligations under the trade and investment provisions of the agreement. The Parties are expected to embark in consultations to find an amicable solution. The SSDS Chapter also foresees the possibility for both Parties to find an amicable solution with the help of a mediator ("mediation" mechanism).

If no solution is found, the complainant can request an independent and impartial panel of arbitrators to rule on the matter. It must be composed by three arbitrators with high qualifications, expertise and experience in trade and international law, who must observe high standards of ethical conduct and render decisions fairly.

During the proceedings, both sides have the possibility to be heard and to expose their arguments. Hearings are open to interested persons, who can also make their own submissions to the panel. The panel will issue a report and its decision is final and must be respected by the Parties. If a Party is found in breach of its obligations, such Party must bring its measures into compliance with the trade and investment provisions of the agreement. The complainant can put in place counter-measures if the infringing Party fails to implement the decision.

The panel that adjudicates the dispute is agreed by the Parties. The dispute settlement procedures are based on due process and transparency principles, allowing interested parties to attend hearings and make their own submissions to the panel.

As a result, the SSDS Chapter puts in place effective, timely and transparent procedures to ensure that both Parties abide by the rules and obligations in the trade and investment provisions of the agreement