

# WORLD TRADE ORGANIZATION

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## Committee on Regional Trade Agreements Fortieth Session

### EXAMINATION OF THE INTERIM AGREEMENT BETWEEN THE EC AND CHILE

#### Note on the Meeting of 28 July 2005

*Chairman: Mr. A. Egger (Switzerland)*

1. The meeting was convened in document WTO/AIR/2624.
2. Under Agenda Item C.VII of its Fortieth Session, the Committee on Regional Trade Agreements (hereinafter CRTA or the Committee) took up the first round of examination of the Interim Agreement between the European Communities (EC) and Chile. The following topics were discussed:
  - A. General Remarks
  - B. Background Information on the Agreement
  - C. Trade Provisions
  - D. General Provisions of the Agreement
3. The Chairman said that the Agreement had been signed on 18 November 2002 and had entered into force on 1 February 2003; it had been notified to the WTO on 18 February 2004, as document with symbol WT/REG164/N/1, with the text of the Agreement appearing in document WT/REG164/1, and the EC's Council Decision on the signature and provisional application of certain provisions of the Association Agreement in document WT/REG164/2. He proposed to organize the examination by first asking the Parties and other Members for general comments, and then to turn to the specifics of the Agreement using the Standard Format (WT/REG164/4) to guide the debate. The terms of reference for the examination of the Agreement which had been adopted by the Council for Trade in Goods on 27 April 2004 could be found in document WT/REG164/3.
  - A. GENERAL REMARKS
4. The representative of the European Communities said that this was an important Agreement for a number of reasons. One was that the EC considered it to be a model Agreement, which in academic circles was called a "third generation" EC Agreement, and it had been very important in developing the EC's approach to regional trade agreements (RTAs). He stressed the EC's long-standing political and economic ties with Chile, not only during periods when the EC had evolved but also during periods when Chile had also evolved. This was a cross-continental, cross-regional RTA which of course attracted a lot of attention, not only among academics, but also in Secretariat reports and the like on RTAs. This was the first RTA that the EC had concluded with a South American partner, though it had of course concluded an RTA with Mexico which would be discussed later that day. He said that negotiations on the EC-Chile Association Agreement had started in April 2000 and had been concluded at the tenth round on 26 April 2002. This conclusion had been announced and welcomed by the Heads of State at the European Union (EU)-Latin America Summit in Madrid in

2002. The trade provisions of the Agreement had entered into force on an interim basis on 1 February 2003. The trade part of the Agreement had given the most innovative and ambitious results ever negotiated by the EU. The Agreement covered all areas of trade relations going well beyond the Parties' WTO commitments. By the progressive and reciprocal elimination of barriers to trade and by establishing clear, stable and transparent rules for exporters, importers and investors, the Agreement favoured bilateral trade and investment flows, opened new markets and opportunities, increased the choices of Chilean and European consumers and ultimately set a framework for sustainable growth. It covered a free-trade area in goods, services and government procurement; liberalization of investment and capital flows; the protection of intellectual property rights; co-operation for competition and an efficient and binding dispute settlement mechanism. The free-trade area in goods was underpinned by transparent and strong rules, including provisions which aimed at the facilitation of trade (in particular in the area of wines and spirits and sanitary and phytosanitary (SPS) measure for which specific agreements were annexed to the Association Agreement) and also in the customs and related areas and standards, technical regulations and conformity assessment procedures. The institutional arrangements included in the Agreement would ensure that its implementation was effectively carried out and new opportunities were explored in an ongoing manner. In this regard, it was important to mention the built-in agenda securing the evolution of the trade provisions. Numerous chapters provided for concrete actions to be taken, including review in the future of the situation with a view to even further deepen the level of preferences granted under the Agreement. Although trade formed an important part of the Agreement, he underlined that the Agreement went far beyond trade. It was based on three pillars, notably a political dialogue, co-operation and trade, thus covering the broad range of EC-Chile relations.

5. The representative of Chile said that since the entry into force of the Agreement there had been a significant increase in trade. In Chile's case, the positive trade balance with EU countries had practically tripled in value over the preceding two years. In volume terms, exports to the EC had increased by 17.2 per cent in the second year the Agreement was in force and imports had increased by 10 per cent over that period. As pointed out by the EC representative, this Agreement went further than just trade and embraced a political and co-operation dialogue. Those who had consulted the website would have seen that the Agreement was structured on the basis of a preamble with 206 Articles divided into five Parts. Part IV of the Agreement contained the rules applicable to trade and trade-related issues. She wished to highlight a few of the trade aspects. The Agreement covered all areas of the Parties' trading relations and went much further than their respective WTO commitments. A free-trade area had been established for goods, services and government procurement. There was liberalization of investment and capital flows, protection of intellectual property rights, co-operation on competition and an efficient and binding dispute settlement mechanism. It was important to mention the built-in agenda in the Agreement, i.e. an evolutionary clause which was intended to deepen the negotiated liberalization and improve provisions. As far as tariff liberalization was concerned, there were six different categories of tariff cuts to totally liberalize tariffs and non-tariff measures in trade in goods excluding just a few agricultural and fisheries products. Details of these tariff cuts could be found in the information provided by the Parties in the Standard Format. A whole series of provisions had been agreed to as a complement to tariff reductions such as in customs procedures and ethical standards for customs, rules of origin, SPS standards, technical regulations and procedures and so on. She concluded that this Agreement of political, economic and co-operation association between the EC and Chile was one of the great landmarks of Chile's foreign policy because it represented a strategic alliance with one of Chile's major partners.

## B. BACKGROUND INFORMATION ON THE AGREEMENT

6. The representative of the United States remarked that given that neither the WTO notification, nor the text of the Agreement notified to the WTO had indicated that the Parties had filed the Annexes, Appendices, Protocols and such with the WTO Secretariat, nor had they provided a web address where those documents could be found, she wondered if those documents had in fact been

filed. Second, when reference was made to the entry into force of the Agreement, she wondered to which entry date it referred: the entry into force of the Interim Agreement which was 1 February 2003; or the entry into force of the Association Agreement which was 1 March 2005?

7. The representative of the European Communities replied that at the end of the Standard Format there was a reference to the website where the full text of the agreement was available. This information had been included in the Standard Format, though not in the initial notification; his delegation was ready to discuss within the context of the Negotiating Group on Rules (NGR) whether such website links should be made available in the original notification. He added that all the EC's Agreements with their Annexes and Protocols were available on the EC website. As for the entry into force of the Agreement, he replied that the trade provisions of some of the EC's Agreements entered into force prior to the finalization of the ratification procedure. This was called a "decision on the application of the trade provisions". As to how this should be interpreted legally, he drew delegations' attention to paragraphs 3 and 4 of Article 198 of the Agreement: paragraph 3 foresaw the early application of a range of Articles, while paragraph 4 explained that for those provisions any reference in the Agreement to the date of entry into force meant the date of early application in accordance with paragraph 3. For all other Articles, the entry into force meant the date of entry into force of the full Agreement, that is the Association Agreement which had entered into force immediately after the completion of ratification, i.e. approval by parliaments. He added that this was an issue which had already been discussed in this Committee and in the NGR. He explained that the distribution of competence within the EC was such that the European Commission or the Community as a whole could take a decision on the entry of force of certain issues. Other issues such as services, which required ratification by national parliaments, could not enter into force before ratification. The Commission had the possibility of taking a decision through the Council, without ratification, for the application of certain goods articles. Those were always listed in the Agreement, and he had provided the reference to the relevant Articles for delegations' benefit in understanding how it worked.

8. The representative of Japan said that it appeared from document WT/REG164/N/1 that there had been a time lag of about one year between entry into force and notification. Given that one of the transparency issues currently being discussed in the NGR was the timing of notification, he wondered why there had been such a time lag. The representative of the European Communities replied that his delegation was ready to clarify when the notification should be submitted within the context of the negotiations taking place in the NGR. In the meantime no defined time period for notification existed.

9. The representative of Australia had a number of questions which she agreed to put in writing. She asked the Parties to explain what would happen to the Agreement after ten years: would the interim Agreement move to being a fully-fledged free trade agreement (FTA)? In Section III.6 of the Standard Format, under "duration", it was stated that the Agreement was valid for an unlimited period and she wondered how that related to the ten year period: would the Agreement be notified to the WTO at that stage, would it be reviewed throughout the ten year period and was there a mechanism to speed it up to become a fully-fledged FTA?

10. The representative of the European Communities thanked the representative of Australia for the advance submission of her question which would facilitate a fuller response. He intended to raise this issue in the NGR as it was an excellent way of preparing for the meeting. As regards the question, he said that perhaps there was a misunderstanding about the nature of the Interim Agreement. It was not "interim" in that it would cease to exist at some point and another agreement would be negotiated in its place. Rather, the Interim Agreement provided a means to provisionally apply the goods provisions which had been notified to the CTG and were now subject to review in the CRTA. Once ratification had been completed in national parliaments, the Association Agreement would enter into force. So, the entry into force and the ten year transition period were incorporated in the entire Agreement. Once it had expired there was no other transition period in the Agreement. He

stressed that from the perspective of his delegation, the goods parts of this Association Agreement which had entered into force prior to the ratification by EC Parliaments, provided for the establishment of a fully-fledged FTA. In addition, it included a number of evolutionary clauses which were basic top-ups. He hoped that this cleared up any misunderstanding of what the Agreement contained. Regarding the duration of the Agreement, the representative of Chile clarified that the Agreement had been signed for an unlimited period which was different from the transition period of ten years. It was of unlimited duration, unless some sort of escape clause existed.

11. The Chairman remarked that the EC representative's proposal regarding the facilitation of future meetings on receiving written questions a couple of days in advance of the meeting would contribute to the working of the Committee and that it should be kept in mind for the NGR.

12. The representative of Australia thanked the Parties for their explanation. Under Scope, the Standard Format stated that the Agreement covered all Chapters of the Harmonized System (HS). She wondered what percentage of tariff lines were covered in all Chapters, and in the agricultural Chapters in particular and what percentage of trade was covered. She was happy to provide the question in writing if necessary.

13. The representative of the European Communities replied that since this question was directed at both Parties it required that the tariff lines be put together and given that tariff lines were different it was like adding apples and oranges. He said he would provide a flavour for the EC side and provide detailed replies on the aggregate coverage of tariff lines at a later point. As for coverage in terms of tariff lines under the Agreement, all tariff lines were included in the Agreement, but this did not mean that all tariff lines were scheduled for liberalization or elimination. In terms of liberalization commitments, he said that for the EC, there was no liberalization commitment at all on six per cent of tariff lines. That was the starting point and did not take into account the review clause.

14. The representative of Chile replied that she had been unable to obtain information on tariff reductions and tariff lines in time for the meeting but that she would provide a written response if the question was submitted in writing. She added that Chile performed a calculation on tariff lines because it was the view of her country that RTAs had to be measured in terms of tariff lines as this reflected not only actual trade but also potential trade.

15. The representative of the United States said she would welcome the information to be provided by the Parties on tariff-line coverage. She said that the EC currently had tariff-rate quotas (TRQs) in the WTO for many of the products where TRQ access was provided to Chile as part of this Agreement, e.g., bovine meat, swine meat, sheep and goat meat, poultry meat and cheeses. She wondered what the relationship was between the preferential access provided under the Agreement using TRQs and whether Chile's preferential access was in addition to the EC's WTO TRQ commitments.

16. The representative of the European Communities replied that the simple answer was that the FTA did not interfere with the EC's commitments in the WTO context. Basically this was a top-up, so there were two separate arrangements, the WTO and the FTA. Under the FTA there were separate rights and obligations, so preferential access came in addition to WTO commitments. He added that this was one of the key aspects that his delegation had raised with the United States with respect to services and the quotas applicable for Mode 4 commitments, especially with regard to the negotiations between the United States and Chile and Singapore. It was of course the effect on third parties that was interesting. Thanking the representative of the European Communities for his response, the representative of the United States asked if he could give an idea of what percentage of tariff lines were covered by these TRQs.

17. The representative of the European Communities replied that the response would be provided in writing and added that there were reciprocal TRQs as well. As for the category called "TQ" in the Agreement, he stressed that the EC-Chile Agreement was to some extent different from the EC's previous agreements in that a full schedule was provided with an indication of whether or not there were any commitments, to allow Members to make calculations easily. From a transparency point of view, this was, in his delegation's opinion, the best way of providing schedules in the future; it would be the basis of their future RTA negotiations. Any delegation with a question on tariff lines would find it easy to calculate the response, but his delegation would be happy to assist. As for the number of tariff lines under agricultural preferential TRQs, he said that 10.8 per cent of the EC's agricultural tariff lines, (i.e. 202 tariff lines) fell into this category. This represented 1.9 per cent of the total number of tariff lines under the Agreement. For fish, ten tariff lines which was 0.1 per cent of the EC's total tariff lines, and 2.6 per cent of the total number of tariff lines in that sector fell under preferential TRQs. He agreed to provide an answer in writing as well. The representative of the United States thanked the previous speaker for his elucidation on tariff line percentages and appreciated the greater transparency provided by the schedules. She asked if the information could be provided in an Excel format as this would greatly facilitate her capital's investigations.

18. The representative of Australia asked for the breakdown of agricultural tariff lines, in general terms as well as for TRQs. She asked what percentage of tariff lines was covered in each different category in the elimination schedule. In relation to agriculture, she asked what the 19.1 per cent of non-covered agricultural trade included and what percentage of agricultural trade was covered at entry into force of the Interim Agreement.

19. The representative of the European Communities said that despite the generous early warning of the question, he had not had the opportunity to dig out the response. Thus he would provide a general reply orally and a detailed response in writing. In reference to the 19.1 per cent of non-covered agricultural trade, he said that different categories applied. The calculation of the residual 80.1 per cent included only the trade in agriculture which was subject to the complete elimination of duties and quotas; this corresponded to a strict interpretation of Article XXIV in terms of coverage. The 19.1 per cent related to various categories in the Agreement, such as lines subject to partial liberalization, or subject to zero duties within TRQs, or goods for which the *ad valorem* duty was eliminated but the specific duty remained. He agreed to revert with details of how much each of those categories accounted for. As for the percentage of agriculture trade which was covered at the entry into force, he presumed that the representative of Australia was referring to coverage in the strict sense of complete elimination of duties and quotas and any other restrictive regulations of commerce, and said he would provide a written response. His tentative figure was that more than 50 per cent of trade in agriculture was covered at the entry into force of the Agreement. He added that while for industrial goods the maximum transition period was three years, the bulk of agricultural trade would be liberalized by the EC in year four.

20. The representative of Chile added that as far as exceptions in the Agreement were concerned, it was important to look at the evolutionary clauses, because the Parties had committed to revise the coverage of agricultural products. For example, for products subject to quotas the Parties would look at the viability of further measures. Although the evolutionary clauses contained certain guidelines, they represented commitments for review. The representative of the European Communities concurred.

21. In relation to rules of origin, the representative of Australia said that the Standard Format stated that bilateral cumulation was foreseen: did this mean that a rule had been negotiated, and how did this fit with the pan European system of cumulation of origin? The representative of the European Communities replied that it did not relate at all to the pan European system of cumulation of origin. As for bilateral cumulation, this question came up in all reviews of the EC's RTAs and the reply was standard. He would provide a written response to it. He asked the representative of Australia in

formulating her question to look at the response provided in the examination of the EC-Mexico Agreement as the same question had been posed.

22. The representative of the United States said that the SPS provisions contained in Annex IV of the Agreement appeared to go well beyond the WTO SPS Agreement in its application. For example, she asked if the Parties could explain the justification for including animal welfare in the text. The representative of the European Communities replied that the Agreement was a reflection of the Parties' priorities and this was an area where the Parties considered it important to go beyond their WTO commitments which was the purpose of RTAs. He agreed to provide a written response if the question was more specific.

23. The representative of Australia asked if any safeguard measures had been invoked and what the significant differences were between the safeguard provisions in this Agreement and the WTO Agreement on Safeguards. The representative of Chile replied that under Article 92 of the Association Agreement, both Parties maintained their rights and obligations to apply overall safeguards according to the provisions of Article XIX of the GATT and to the WTO Agreement on Safeguards. However in Article 92, the Parties agreed on certain provisions which regulated the bilateral treatment of safeguards such as written notification, consultation and negotiation of time periods for the rights under Article 8 of the Agreement on Safeguard to be applied. She added that both Parties had applied overall measures which had been approved in the WTO, and these particular procedures were being continued and had been agreed upon. The Agreement had another safeguard mechanism, in Article 7, which related to emergency clauses in agriculture.

24. In response to a question by the representative of Australia, the representative of Chile clarified that the agricultural safeguard mechanism in the Agreement had never been invoked; As the Parties had no experience, she could not give much information on how they would be applied. These safeguards referred to bilateral trade in agricultural and processed agricultural products and the requirements for their application were defined in Article 73. They were applied in the framework of liberalization and offered an opportunity to take measures in the event of severe disruptions.

25. In relation to Sector-Specific Provisions, the representative of Australia said she had some questions similar to those posed by the representative of the United States on TRQs, which she agreed to put in writing. On services, she asked the Parties to explain what provisions the Agreement contained. In the Standard Format it was stated that the Chapter on services foresaw reciprocal liberalisation in trade in services in conformity with Article V of the GATS and she wondered what that meant. The representative of the European Communities replied that the Parties would soon provide the notification of the services aspects of the Agreement. He added that the Parties stood ready to explain in detail what the services chapter, which in their view was fully compliant with GATS Article V, contained once the review of the services aspects commenced, and he suggested putting the question on hold until then.

#### D. GENERAL PROVISIONS OF THE AGREEMENT

26. Regarding the protection for geographical indications (GIs) of names for wines established in Article 5 of Annex V, and the designation of spirit drinks and aromatized drinks established in Article 5 of Annex VI, the representative of the United States asked whether these provisions expanded protection offered by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and if so, how; she also asked whether these provisions adversely affect imports from third countries. The representative of Chile said he could provide a written response to the question but agreed to provide some general comments. He said that this provision expanded the protection offered by the TRIPS Agreement in the sense that each Party recognized the other Party's GIs; there was thus protection for specific GIs. The TRIPS Agreement did not protect specific GIs, but provided a framework within which the GIs of WTO Members had to be accepted. In this sense the Agreement

went beyond the TRIPS Agreement. Chile had accepted certain GIs from the EC and the EC had accepted certain GIs from Chile.

27. The Chairman said that the first round of the EC-Chile Interim Agreement had allowed the Committee to clarify a number of questions, but others remained pending. He invited delegations wishing to submit questions to forward them in writing to the Secretariat by 23 September and for the Parties to provide written responses by 31 October.

28. The Committee took note of the comments made.

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